-303 (Rev. 6-1-60)

FEDERAL BUREAU OF INVESTIGATION

REPORTING OFFICE	OFFICE OF ORIGIN	DATE	INVESTIGATIVE PERIOD
ATLANTA	ATLANTA	6/24/66	6/16 - 23/66

TITLE OF CASE	REPORT MADE BY	TYPED BY
HERBERT GUEST; ET AL; LT. COL. LEMUEL A. PENN, Deceased, USAR SN 0348661; ET AL - VICTIMS	SA [redacted]	/rlw

CHARACTER OF CASE

b7c

CIVIL RIGHTS -
NATIONAL FIREARMS ACT

31

REFERENCE: Report of SA [redacted] Atlanta, 6/17/66.

b7c

- P -

ENCLOSURES:

TO BUREAU:

One copy of five (5) photographs received from [redacted] Athens, Ga., on 6/16/66. b7c

[redacted] received from [redacted] Athens, Ga., on 6/16/66. b7c b7D

LEADS:

APPROVED: KI cms — SPECIAL AGENT IN CHARGE

COPIES MADE:

5 - Bureau (44-25873) (Encs. 7)
1 - USA, Macon, Georgia (Encs. 7)
1 - Departmental Attorney, (Encs. 2)
Athens, Georgia
5 - Atlanta (157-788)

ENCLOSURE

DO NOT WRITE IN SPACES BELOW

44-25873-477 REC-57

16 JUN 27 1966

ENCLOSURE ATTACHED

DISSEMINATION RECORD OF ATTACHED REPORT

AGENCY	CRD		
REQUEST RECD.	6-27-66		
DATE FWD.	6-94	JUL 7 1966	
HOW FWD.	USPS		
BY	b,b		

NOTATIONS

Ltr dynapaus
C Clint

STAT. SECT

477-571

AT 157-788

Specific leads not being set out in view of fact all leads handled expeditiously, matter receiving continuous investigative attention, and Bureau being kept advised by appropriate communication of pertinent developments.

ADMINISTRATIVE:

It is to be noted that the set of five (5) enlarged photographs furnished by [redacted] Athens, Ga., on 6/16/66 was furnished to [redacted], Departmental Attorney, Athens, Ga., by SA ROBERT MICHAEL KANE on 6/20/66 for possible use in the trial. Three (3) sets of smaller photographs were made from the enlargements. One of these sets is being furnished herewith to the Bureau, one set is being sent as an enclosure to the U. S. Attorney, Macon, Ga., and one set is being retained in the file at Atlanta.

Persons interviewed were advised this investigation is being conducted at the specific request of NICHOLAS deB KATZENBACH, Attorney General, Department of Justice.

FD-204 (Rev. 3-3-52)

UNITED STATES DEPARTMENT OF JUSTICE
FEDERAL BUREAU OF INVESTIGATION

Copy to: 1 - USA, Macon, Georgia (Enclosures - 7)
1 - Departmental Attorney, Athens, Georgia (Enclosures - 2)

Report of: SA [redacted] Office: ATLANTA
Date: June 24, 1966

b7c

Field Office File #: 157-788 Bureau File #: 44-25873

Title:
HERBERT GUEST;
ET AL;
LT. COL. LEMUEL A. PENN,
Deceased, USAR SN 0348661;
ET AL -
VICTIMS

Character: CIVIL RIGHTS - NATIONAL FIREARMS ACT

Synopsis: Former supervisors and fellow employees, Peoples Oil Company, state subject LACKEY satisfactory to better than average employee. Psychiatric evaluation of subject SIMS set out. [redacted] Gunsmith, Athens, Ga., states he did not alter gun for Sims. Copies of [redacted] obtained from [redacted] Athens, Ga. Photographs of picketing at the Varsity, Athens, Ga., and of the attack on BRIGIDO CASE, Crawfordville, Ga., obtained.

b7c
b7D

- P -

ENCLOSURES:

TO U. S. ATTORNEY, MACON, GEORGIA:

Enclosed for the U. S. Attorney, Macon, Georgia, are one copy each of five (5) photographs received from [redacted] Athens, Georgia, and one copy each of [redacted] received from [redacted]

b7c
b7D

TO DEPARTMENTAL ATTORNEY, ATHENS, GEORGIA:

Enclosed for the Departmental Attorney, Athens, Georgia, is one copy each of [redacted] from [redacted] Athens, Georgia.

b7c
b7D

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AT 157-788
JBH:rlw

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b7C

b7D

AT 157-788
JBH:rlw

DETAILS:

This report contains results of a limited investigation.

This investigation was predicated upon requests, for additional investigation in this matter, made by the Department of Justice to the Bureau in Washington, D. C., and by Departmental Attorneys directly to the FBI at Athens, Georgia

AT 157-788
JBH:rlw

I. JAMES S. LACKEY

A. EMPLOYMENT RECORD

ME #157-536
LJO:FJ
1

The following investigation was conducted by SA [redacted] at Nashville, Tennessee:

On June 16, 1966, [redacted] b7c Peoples Oil Company, 1008 Thompson Lane, furnished the following information:

A review of the company's payroll records indicates that the following listed were either supervisors or subordinates of JAMES S. LACKEY during his period of employment with the Peoples Oil Company:

SUPERVISORS

[redacted], presently with Peoples Oil Company in Nashville

[redacted] b7c presently with Peoples Oil Company in Nashville

[redacted] District Supervisor since 1961, 527 Scott Circle, NE, Decatur, Georgia.

SUBORDINATES

At Chattanooga, Tennessee

[redacted] b7c

At Gainesville, Georgia

[redacted], presently manager of Station #9, 794 Athens Street, SE

[redacted] b7c

At New Holland, Georgia

[redacted]

NE #157-536
LJO:FJ
2

At Athens, Georgia

[redacted] presently manager -
Station 457, 198 Oconee Street
FRANKLIN MYERS, 445 Helga Street

1

[redacted] Nashville, Tennessee, furnished the following information: b7C

He is presently employed by the Peoples Oil Company, headquartered in Nashville, Tennessee, as the Nashville District Manager. He formerly was the manager of Station Operations and in that capacity became acquainted with JAMES S. LACKEY, who formerly was employed by his company. LACKEY was first employed by his company as a station attendant or salesman sometime around 1957, and transferred some two years later toChattanooga, Tennessee as a station manager.

LACKEY did an excellent job for the company, both as a station attendant and as a station manager. Sometime in late 1963, LACKEY resigned and was later employed in early 1964 by the company as a service station manager at Athens, Georgia where he continued to perform well in that capacity.

LACKEY had daily responsibilities in that he was responsible as station manager for handling $400 to $500 each day in station sales and receipts and around twice that much on weekends. LACKEY had daily bank deposits to make and each day sent in the duplicate deposit slip along with the sales report for the station's business on that particular day. LACKEY was also responsible for maintaining a daily inventory of the company's products in the service station, including gasoline and oil. LACKEY also had four employees working under him while in Chattanooga and three working under him in Athens. LACKEY had the responsibility of hiring and firing of the people who worked under him. LACKEY handled all of the responsibilities relative to his job as station manager in a highly satisfactory manner. He was rated by the company as one of their top managers, inasmuch as there was never any difficulty concerned with the stations that he was operating.

His company as a matter of policy does not make any written evaluations or fitness reports concerning their employees being hired, fired or transferred and as such does not have any reports concerning LACKEY on file.

He considers LACKEY to have behaved normally during

On 6-17-66 at Nashville, Tennessee File # Memphis #157-536
Atlanta #157-788 b7C

by SA [redacted]:FJ Date dictated 6-20-66

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the time that he was in contact with LACKEY, and to his knowledge LACKEY never exhibited any abnormal behavior such as lapses of memory or a persecution complex.

FD-302 (Rev. 1-25-60) FEDERAL BUREAU OF INVESTIGATION

1 Date 6-21-66

[redacted] of Peoples Oil Company, 1008 Thompson Lane, Nashville, Tennessee, furnished the following information: b7c

[redacted] b7c

He first became acquainted with JAMES S. LACKEY sometime in 1958 when LACKEY was working for Peoples Oil Company as a station attendant in Gainesville, Georgia. When it came to the company's attention that LACKEY was manager material, the company gave him training in that regard and transferred him to Chattanooga, Tennessee sometime in the Fall of 1959, where he became a station manager. In LACKEY's capacity as service station attendant, he was responsible for the money that was taken in on his shift. When LACKEY became a station manager he was held responsible for the sole operation of the station which would include the financial transactions of all shifts, the equipment, the inventory, including equipment and stock such as gasoline and oil, made bank deposits and wrote company sales reports and was responsible for the personnel employed by LACKEY at the station. LACKEY had the sole responsibility of hiring and supervising the employees who worked under him and could fire these same employees if their performance was unsatisfactory. LACKEY carried the entire responsibility for the over-all management of the station at which he worked in the capacity of manager.

LACKEY was a "country boy" who did not have much formal education, and was working about the peak of his abilities in his capacity as station manager. He did his job very well and never presented any administrative problems to the company. LACKEY's money never came out short, there were never any shortages concerning his inventory, and he always made his bank deposits on time and filed his sales reports on time. The only problem that the company experienced with LACKEY during the operation of the station was that from time to time the cleanliness of the station would be in poor condition.

When LACKEY took over the operation of the company station at Athens, Georgia, he took over a "problem station"

9

On 6-20-66 at Nashville, Tennessee File # Memphis #157-536
Atlanta #157-788

by SA [redacted]:FJ Date dictated 6-20-66 b7c

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and had the ability to straighten the station out and get it into good shape.

The company maintained no fitness or general competency report of their employees and as such there is no record in the company files concerning LACKEY in this regard.

To his knowledge LACKEY never exhibited any abnormal behavior as such regarding lapse of memory or a persecution complex but LACKEY did at one time become extremely depressed. This was a two-months period shortly after the death of his son, who died as an infant. The child's death seemed to have upset LACKEY greatly and as he stated he underwent a period of depression.

LACKEY would be suitable for rehire by his company based upon the way he had performed his duties in the past with the company, however, it would be extremely doubtful that LACKEY could be employed by his company in view of the fairly recent well publicized difficulties that LACKEY has been experiencing .

FD-302 (Rev. 4-15-64)

FEDERAL BUREAU OF INVESTIGATION

1

Date 6-18-66

[redacted] was interviewed and furnished the following information: b7c

He was employed as the swing shift relief man at the Peoples Oil Company under Mr. JAMES LACKEY for approximately one year. He recalls that this was mostly during 1963 but could have extended back into 1962. He very seldom worked a complete shift with Mr. LACKEY and did not have an extended amount of contact with him. He stated Mr. LACKEY was very easy to get along with and got along extremely well with all customers. He has never seen nor heard of Mr. LACKEY having any black-out spells, lapse of memory, or persecution feelings, he never heard Mr. LACKEY say anything that would indicate any of these problems.

He felt that Mr. LACKEY was capable of being station manager and never knew of any financial shortages in company funds. He stated that Mr. LACKEY would check the cash register when that was done and would usually handle the bank deposits for the company.

11

On 6-17-66 at Chattanooga, Tennessee File # KX 157-265

SA [redacted] gsh 6-18-66 b7c

by Date dictated

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FD-302 (Rev. 4-15-64)

FEDERAL BUREAU OF INVESTIGATION

1

Date 6-18-66

[redacted] was interviewed and furnished the following information: b7C

He advised that he has known Mr. JAMES LACKEY for about 4 or 5 years. He started working for Mr. LACKEY in the summer of 1960 and left the employment of the Peoples Oil Company during the summer of 1964. He stated Mr. LACKEY left before he did, but he was not able to fix the dates of either his exact employment or the date that Mr. Lackey left. He stated he recalls, he thinks, that he and Mr LACKEY worked there for 8 or 9 months together. During this time Mr. LACKEY was the manager [redacted] They did not work the same shift and contact was somewhat limited. b7C

[redacted] recalls several occasions, however, when Mr. LACKEY would be leaving the day shift and would leave the company's money laying out on a table in the service station office and upon being asked whether or not it should be locked up, he would usually comment that he had forgotten about it. b7C

Other than that, [redacted] states he knows of no abnormal behavior or other lapse of memory or any persecution feelings on the part of Mr. LACKEY.

He states Mr. LACKEY was a very easy person to get along with, that he got along very well with all of the employees and all of the customers at the service station.

[redacted] advised that in his opinion Mr. LACKEY was able to perform his duties as service station manager in a competent manner. b7C

12

On 6-17-66 at Chattanooga, Tennessee File # KX 157-265

by SA [redacted] and SA [redacted] gsh Date dictated 6-18-66 b7C

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FD-302 (Rev. 4-[illegible]-44)

FEDERAL BUREAU OF INVESTIGATION

1

Date 6-18-66

[redacted] b2c

was interviewed and furnished the following information:

He was employed at the Peoples Oil Company under Mr. JAMES LACKEY during 1963. He was not able to recall the exact number of months, but stated that he has known Mr. LACKEY for 3 to 4 years. He knew him when he, [redacted], was a customer at the Peoples Oil Company and Mr. LACKEY the manager. b7c

During his employment, [redacted] worked the 11:00 PM to 7:00 AM shift most of the time and the only actual contact he had with Mr. LACKEY would be for a 10 or 15 minute period when Mr. LACKEY would relieve him at 7:00 AM each morning.

He does not know and has never heard of Mr. LACKEY having any black-out spells, lapse of memory, or persecution feelings. He felt that Mr. LACKEY handled his duties as service station manager in a competent manner and assumes he handled the financial and other business satisfactorily, as he never heard of any shortages in company funds.

13

On 6-17-66 at Chattanooga, Tennessee File # KX 157-265

by SA [redacted] and SA gsh b7c Date dictated 6-18-66

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FEDERAL BUREAU OF INVESTIGATION

Date 6/20/66

1

On June 17, 1966, [redacted] b7c

[redacted] said he was in charge of the People's station in Athens in 1964 when JAMES LACKEY was manager of this station. LACKEY had also worked for the company in Chattanooga, Tennessee, and in Gainesville, Georgia, and had been transferred to Athens sometime in January of 1964. b7c

According to [redacted] JAMES LACKEY had been under supervision from April, 1964, until he was arrested in connection with the LEMUEL PENN case.

When under [redacted] supervision, LACKEY was considered an above-average employee who handled his work as manager of this station in a satisfactory manner. His incidence of error was below average and audit of his books reflected he had a good working knowledge of procedures. b7c

[redacted] considered LACKEY a capable manager, better than average with little need for supervision. Few complaints were ever received by [redacted] concerning LACKEY's work or relation with customers. b7c

[redacted] said he had filled out rating sheets on LACKEY covering such items as personal cleanliness, service condition of building and grounds, knowledge of company forms, instruction of other employees and so forth and that LACKEY had been rated in each instance as satisfactory and better than average.

[redacted] said he forwarded these forms to Nashville headquarters of the company but decided they would have been retained. He suggested that the employees, [redacted] and [redacted] could be contacted as they also have personal knowledge of LACKEY's work and could rate him. b7c

-14-

On 6/17/66 at Decatur, Georgia File # Atlanta 157-783

by SA JACK B. SIMPSON /JBJ Date dictated 6/27/66

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FEDERAL BUREAU OF INVESTIGATION

Date June 20, 1966

1

[redacted] People's Oil Company Service Station, Oconee Street, advised that during 1964, exact date unrecalled, JAMES S. LACKEY was the manager of the People's Oil Company Station on Oconee Street in Athens, Georgia. [redacted] worked under the supervision of LACKEY and [redacted] advised that there was no one else in Athens who was a supervisor for LACKEY and himself. He pointed out the home office of the People's Oil Company is in Nashville, Tennessee. [redacted] advised that LACKEY, acting as Manager, was responsible for the financial and administrative duties in the operation of this station. He stated that LACKEY would never converse with him when they relieved each other from their respective work shifts. [redacted] stated that insofar as he knew LACKEY performed his duties satisfactorily as Manager of the station. b7c

[redacted] advised that he could not recall any instances where LACKEY showed any abnormal behavior such as a lapse of memory of any persecution feelings. [redacted] restated that LACKEY was very quiet and would not talk to him as normal individuals would converse working at the same job. b7c

He advised that he considered that LACKEY's work was satisfactory and that he was competent in his work.

[redacted] advised that he knew of no written fitness reports which could have been prepared concerning LACKEY by anyone connected with the People's Oil Company. [redacted] advised that he could be located care of the People's Oil Company, Oconee Street, Athens, at any time that he might be needed. b7c

-15-

On 6-20-66 at Athens, Georgia File # Atlanta 157-788

by SA ROBERT MICHAEL KANE/pag Date dictated 6-20-66

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D-38a (Rev. 1-25-60)

FEDERAL BUREAU OF INVESTIGATION

Date June 17, 1966

1

[redacted] New Holland, Georgia, advised that he had been employed with JAMES S. LACKEY at the Peoples Service Station, 724 Athens Street, Gainesville, Georgia, in 1960 as best he recalled. [redacted] stated that he was employed on the third shift working the hours of 11 p.m. until 7 a.m., and that LACKEY relieved him on the first shift at approximately 7 a.m. each morning. b7c

[redacted] stated he had no close association with LACKEY other than speaking to him each morning when he arrived and had no knowledge of any Ku Klux Klan activity in which LACKEY was engaged. [redacted] further advised that LACKEY appeared to have a keen mind and knew of no incidents which would indicate that LACKEY had any mental problems of any kind. [redacted] reiterated that he was not well acquainted with LACKEY and stated the only association he had with him was at the Peoples Service Station. b7c

[redacted] added that approximately 90 percent of the customers at the Peoples Service Station in Gainesville were Negroes and that at no time to his knowledge did LACKEY have any difficulties of any kind with them. b7c

-10-

On 6-17-66 at New Holland, Georgia File # Atlanta 157-788 b7c

by SA [redacted] SA [redacted] Date dictated 6-17-66

This document contains neither recommendations nor conclusions of the FBI. It is the property of the FBI and is loaned to your agency; it and its contents are not to be distributed outside your agency.

AT 157-788
JBH:r lw

II. JOSEPH HOWARD SIMS' PSYCHIATRIC EVALUATION

AT 157-788
JBH/jlc
1

On June 17, 1966, FLOYD M. BUFORD, U. S. Attorney, Macon, Georgia, furnished SA ROBERT MICHAEL KANE a copy of the Psychiatric Evaluation of JOSEPH HOWARD SIMS dated June 8, 1966. It will be noted this evaluation was prepared as a result of a court order issued by Judge W. A. BOOTLE, U.S. District Court, Macon, Georgia. The evaluation is as follows:

4-750 (2-7-79)

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44-25873-477 PAGES 19-22

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FBI/DOJ

AT 157-788
JBH:rlw

III. [redacted] b7c
ATHENS, GEORGIA

a. ITHICA SHOTGUN, SN 24266

FD-302 (Rev. 1-25-60) FEDERAL BUREAU OF INVESTIGATION

Date June 20, 1966

1

[redacted]. Athens, Georgia, advised that he is a gunsmith by trade and was formerly employed by the [redacted] at [redacted] b7c

[redacted] stated he has been acquainted with HOWARD SIMS and HERBERT GUEST for approximately three years. He related he knew SIMS as also being a gunsmith and machinest and SIMS had sent gunsmith type business to him over the years. b7c

[redacted] stated he had never cut any barrels of shotguns for GUEST or any other persons and that, in fact, he had never worked on any shotguns for either GUEST or SIMS.

He stated that SIMS did not give him any shotgun, specifically any 12 gauge Ithica shotgun to work on in approximately July 15 through July 30, 1964. b7c

[redacted] recalled HERBERT GUEST brought him on one occasion a wooden butt portion of a shotgun in order to have [redacted] do some "checker" work on the butt, that is, to finish a design which had been on the butt end of the weapon by the manufacturer. [redacted] recalled the butt portion of GUEST's gun had been cut near the checker portion of the butt. He reiterated this was the only part of the weapon, that is, the butt portion made of wood, that had been brought to him by GUEST.

[redacted] stated that a barrel of a shotgun made by the LeFebre Company long before the time that the PENN murder case developed, this weapon being owned by SIMS, was brought to his shop by SIMS for the purpose of [redacted] welding the separated barrel portion back together. b7c

[redacted] stated that he is well aware of the legal length of shotguns as required by the U.S. Treasury Department and that being a legitimate gunsmith, he will not perform any work in reducing the size of a shotgun, either by cutting barrels or stocks. b7c

-24-

On 6-17-66 at Athens, Georgia File # Atlanta 157-788

by SA ROBERT MICHAEL KANE/pag Date dictated 6-20-66

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[redacted] advised that although he is a gunsmith and acquainted with SIMS who was also a gunsmith, he never associated with SIMS and that their dealings were primarily based on their interest in machinest or gunsmith type work. He readily admitted that SIMS had sent him business and he specified that this was legitimate gunsmith business and further that he, [redacted] had on occasion borrowed tools needed in gunsmith work from SIMS. He explained that SIMS had a complete machine shop equipped with every imaginable tool for this work.

b7c

4-750 (2-7-79)

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FEDERAL BUREAU OF INVESTIGATION

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44-25873-477 PAGES 26 + 27

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FBI/DOJ

AT 157-788
JBH:rlw

V. PHOTOGRAPHS

FD-302a (Rev. 1-25-60) FEDERAL BUREAU OF INVESTIGATION

Date June 20, 1966

1

[redacted] furnished one copy each of a set of five enlarged photographs which were taken on March 12, or 13, 1964, at Athens, Georgia, by [redacted] an employee of the City of Athens, Georgia, [redacted]

b7C
b7D

These photographs are of persons picketing at The Varsity, Athens, Georgia, in March, 1964, and reveal persons in white robes and hoods.

-29-

On 6/16/66 at Athens, Georgia File # Atlanta 157-788

by SA ROBERT MICHAEL KANE /bbp Date dictated 6/20/66

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AT 157-788
RMK/bbp
1

On June 20, 1966, SA ROBERT MICHAEL KANE delivered to KENNETH McINTYRE, Departmental Attorney, Athens, Georgia, the set of five enlarged photographs furnished by [redacted] Athens, Georgia, on June 16, 1966, revealing picketing at The Varsity, Athens, Georgia, in March, 1964. b7c

Under date of June 22, 1966, the New York Office advised that contact at New York City with the following sources revealed there was no coverage afforded racial activity at Athens, Georgia, during the period of January to July, 1964:

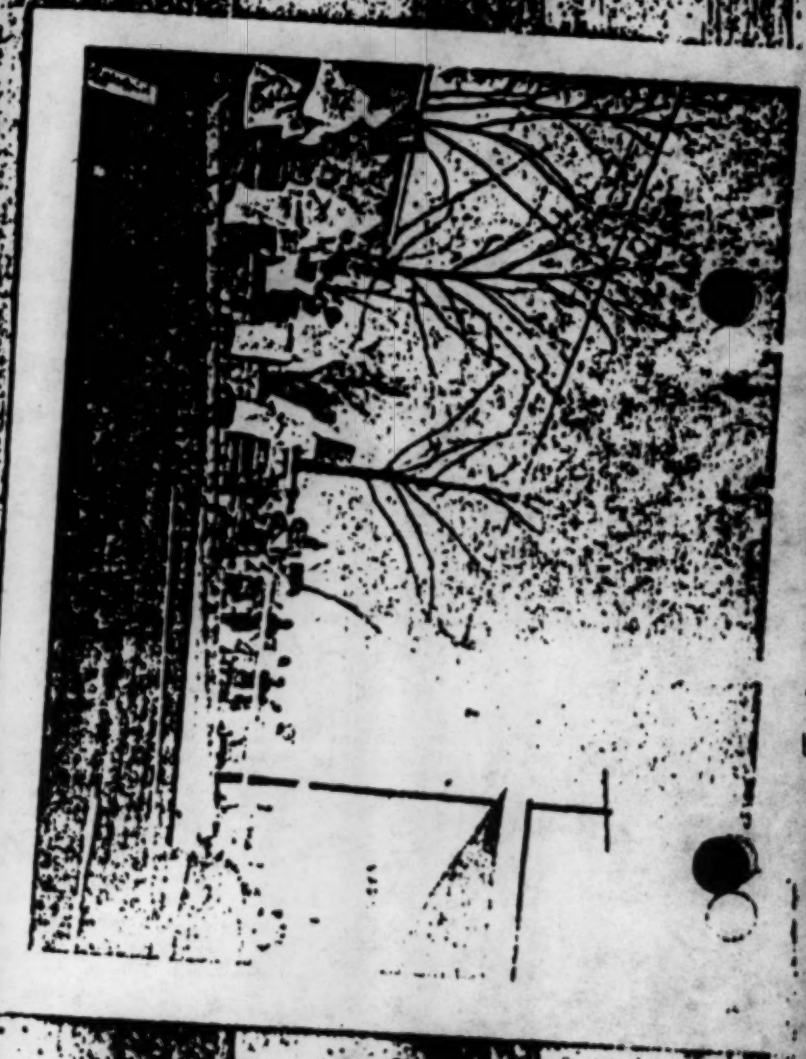
Associated Press
United Press International
Columbia Broadcasting System
National Broadcasting Company

On June 20, 1966, SA KANE delivered to KENNETH MC INTYRE, Departmental Attorney, Athens, Georgia, the film obtained by the New York Office from CBS, showing the attack on BRIGIDO CABE at Crawfordsville, Georgia.

-30*-

VARSITY

VARSITY



VARSITY

4-750 (2-7-79)

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44-25873-477 ENCLOSURE PAGES 6-9

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X NO DUPLICATION FEE X
X FOR THIS PAGE X
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XXXXXX
XXXXXX
XXXXXX

FBI/DOJ

6/28/66

1 - Mr. Boyd

Airtel

To: SAC, Atlanta (157-788)

From: Director, FBI (44-25873)

PENVIC

Pursuant to a request received from Departmental Attorney Robert Ackerman, there are enclosed two copies of an identification record on [redacted] b7c A copy of this identification record is to be promptly made available to U. S. Attorney Floyd M. Buford who is trying this case at Athens, Georgia.

Enclosures (2)

JJB/pak (4)

NOTE: Trial began in this matter on 6/27/66. Departmental Attorney Ackerman on 6/28/66, requested identification record on [redacted] who is a witness in this case. A copy of [redacted] record was furnished Ackerman on 6/28/66, and he requested that a copy also be promptly forwarded to U. S. Attorney prosecuting this case. Ackerman stated he was telephonically contacting Department Attorney on the scene to furnish details reflected in the identification record.

REC 20 — 478

29 JUN 29 1966

MAILED 27
JUN 28 1966
COMM-FBI

Tolson
DeLoach
Mohr
Wick
Casper
Callahan
Conrad
Felt
Gale
Rosen
Sullivan
Tavel
Trotter
Tele. Room
Holmes
Gandy

50 JUL 1 1966

MAIL ROOM ☑ TELETYPE UNIT ☐

NK
8:33 PM
6/27

FEDERAL BUREAU OF INVESTIGATION
U. S. DEPARTMENT OF JUSTICE
COMMUNICATIONS SECTION
JUN 27 1966

TELETYPE

Mr. Tolson
Mr. DeLoach
Mr. Mohr
Mr. Wick
Mr. Casper
Mr. Callahan
Mr. Conrad
Mr. Felt
Mr. Gale
Mr. Rosen
Mr. Sullivan
Mr. Tavel
Mr. Trotter
Tele. Room
Miss Holmes
Miss Gandy

FBI ATLANTA

6:55 PM EST URGENT 6-27-66 ARK

TO DIRECTOR (44-25873)

FROM ATLANTA (157-788)

PENVIC.

CASE CALLED TWENTY-SEVENTH INSTANT. FULL DAY SPENT QUESTIONING JURORS, INDIVIDUALLY, BY JUDGE BOOTLE, U.S. ATTORNEY, AND DEFENSE ATTORNEY, TO GET JURY PANELED.

BUREAU WILL BE KEPT ADVISED OF PROGRESS OF TRIAL.

END

WA..JXM

FBI WASH DC

TU CLR.

REC 54 44-25873-499

EX-102

4 JUN 29 1966

54 JUL 11 1966

June 29, 1966

GENERAL INVESTIGATIVE DIVISION

Attached concerns the trial of three subjects at Athens, Georgia, who are being tried in connection with the murder of Lt. Colonel Lemuel Penn during 1964.

KMR:hw

FBI WASH DC

FBI ATLANTA

607 PM EST URGENT 6-28-66 THW

TO DIRECTOR (44-25873)

FROM ATLANTA (157-788)

FEDERAL BUREAU OF INVESTIGATION
U. S. DEPARTMENT OF JUSTICE
COMMUNICATIONS SECTION
JUN 28 1966
TELETYPE

PENVIC

RE AT TEL JUNE TWENTYSEVEN LAST.

TRIAL CONTINUED TODAY WITHOUT UNUSUAL INCIDENT. NINE WITNESSES TESTIFIED REGARDING CERTAIN INCIDENTS OCCURRING IN ATHENS AREA JAN. - JULY, NINETEEEN SIXTYFOUR. ANTICIPATE TRIAL WILL PROGRESS ON JUNE TWENTYNINE NEXT TO POINT OF CALLING WITNESSES RE PENN. MURDER.

BUREAU WILL BE KEPT ADVISED.

END

WA ..GJG

FBI WASH DC

UX

REC-26 44-25873-480

MR. DELOACH FOR THE DIRECTOR

JUN 29 1966

69 JUL 5 1966

DC-MR. ROSEN

NR 8/25/PM
6/29/66 Kml

FEDERAL BUREAU OF INVESTIGATION
U. S. DEPARTMENT OF JUSTICE
COMMUNICATIONS SECTION
JUN 29 1966
TELETYPE

FBI WASH DC

FBI ATLANTA

645PM EST URGENT 6-29-66 JDW

TO DIRECTOR /44-25873/

FROM ATLANTA /157-788/

PENVIC

RE ATLANTA TEL JUNE TWENTYEIGHT LAST.

TODAY GOVERNMENT'S CASE HAS BEEN DIRECTED PRIMARILY AT PROVING INCIDENTS LEADING UP TO PENN MURDER AND ONE INCIDENT OCCURRING SUBSEQUENT TO PENN MURDER. THESE INCIDENTS ARE AMONG THOSE DESCRIBED IN REPORT OF SA [redacted] ATLANTA, AUGUST ELEVEN, SIXTYFOUR. NAMELY, THE VARSITY DRIVE- IN RACIAL DEMONSTRATIONS AND THE [redacted] INCIDENT IN MARCH, SIXTYFOUR; THE BROAD ACRES APARTMENT INCIDENT ON JUNE TWENTY - TWENTYONE, SIXTYFOUR; THE INCIDENT INVOLVING ELDERLY COUPLE IN NEW JERSEY CAR AND THE ROB WALKER DRIVE- IN INCIDENT ON JULY FOUR, SIXTYFOUR, AND THE INCIDENT ON JULY EIGHT, SIXTYFOUR, INVOLVING ARREST OF [redacted] ALL ATHENS, GEORGIA. IN ADDITION, PROOF HAS BEEN PRESENTED RELATIVE TO THE CRAWFORDVILLE INCIDENT IN OCTOBER, SIXTYFIVE, INVOLVING VICTIMS GEORGE AND OMER TURNER OF CRAWFORDVILLE, GA.

REC 98 44-25873-481

JUN 30 1966

END PAGE ONE

56 JUL 6 1966

cc Boyd

Mr. Tolson
Mr. DeLoach
Mr. Mohr
Mr. Wick
Mr. Casper
Mr. Callahan
Mr. Conrad
Mr. Felt
Mr. Gale
Mr. Rosen
Mr. Sullivan
Mr. Tavel
Mr. Trotter
Tele. Room
Miss Holmes
Miss Gandy

SAWED-OFF SHOTGUNS, RIFLE, SIDEARMS, AMMUNITION, CLUBS, AND CHAINS PRESENTED IN THIS CASE.

CRAWFORDVILLE CASE INVOLVED BEATING OF GEORGE TURNER BY CECIL MYERS, HOWARD SIMS, AND OTHER KLANSMEN.

PROOF PRESENTED THESE INCIDENTS TO SHOW CONTINUING CONSPIRACY OF DEFENDANTS FROM EARLY SIXTYFOUR THROUGH OCTOBER SIXTYFIVE.

COURT ADJOURNED SIX PM TODAY AFTER HEARING TESTIMONY OF LT. COLONEL JOHN DANIEL HOWARD, VICTIM, WHO IS FIRST WITNESS TO TESTIFY IN PENN TRIAL.

COURT TO CONVENE JUNE THIRTY NEXT AND PROSECUTION WILL CONTINUE WITH PROOF IN PENN MURDER CASE.

JUDGE BOOTLE HAS STATED WILL CONTINUE TO HOLD COURT FROM NINE AM TO SIX PM EACH DAY, INCLUDING SATURDAY, JULY TWO, AND JULY FOUR, NEXT. UPON COMPLETION INSTANT TRIAL SELECTION OF JURY FOR TRIAL OF OTHER THREE DEFENDANTS WILL BEGIN IMMEDIATELY AND TRIAL WILL CONTINUE ON PRESENT SCHEDULE UNTIL COMPLETED.

BUREAU WILL BE KEPT ADVISED.

END AND ACK PLS

WA JXM

FBI WASH DC

CLR

BBI WASH DC

FBI WASH DC

FBI ATLANTA

555PM EST URGENT 7-1-66 JDW

TO DIRECTOR /44-25873/

FROM ATLANTA /157-788/

FEDERAL BUREAU OF INVESTIGATION
U. S. DEPARTMENT OF JUSTICE
COMMUNICATIONS SECTION
JUL 1 1966
TELETYPE

PENVIC.

REATTEL JUNE THIRTY LAST.

COURT CONVENED NINE A.M., TODAY. SAS PHILLIP B. CARR AND WILLIAM D. ANDREWS, JR., CALLED AS REBUTTAL WITNESSES TO TESTIMONY OF CLYDE HARPER AND MRS. RUTH BERTLING WHO TESTIFIED ON JUNE THIRTY LAST THAT SIMS AND MYERS SEEN BY THEM AT OPEN HOUSE RESTAURANT, ATHENS, GA., PERTINENT PERIOD JULY ELEVEN, SIXTYFOUR. TESTIMONY OF CARR AND ANDREWS TENDED TO DISCREDIT TESTIMONY OF HARPER AND BERTLING IN THAT INFORMATION FURNISHED SPECIAL AGENTS IN INTERVIEWS OF MYERS AND SIMS WAS CONTRADICTORY TO THAT FURNISHED BY HARPER AND BERTLING. DEFENSE RESTED CASE APPROXIMATELY ELEVEN A.M. TODAY. STATEMENTS OF GOVERNMENT AND DEFENSE ATTORNEYS TO JURY COMPLETED TWO FIFTY P.M. TODAY. JUDGE BOOTLE INSTRUCTED JURY AND JURY RETIRED AT FOUR FIFTEEN P.M.

482

EX-103 REC-9

12 JUL 6 1966

GOVERNMENT AND DEFENSE ATTORNEYS HAVE STIPULATED AND WAIVED RIGHT TO POLL THE JURY. JUDGE BOOTLE HAS ORDERED SEALED VERDICT TO BE HANDED UP TO HIM FOR HIS CONFIDENTIAL INFORMATION. VERDICT

57 JUL 15 1966

END PAGE ONE

PAGE TWO

OF JURY INSTANT TRIAL NOT TO BE REVEALED UNTIL JURY IN TRIAL OF SUBJECTS GUEST, LACKEY AND PHILLIPS REACHES VERDICT. SELECTION OF JURY PANEL AND JURORS FOR GUEST ET AL AT TRIAL WILL BEGIN NINE THIRTY A.M., JULY TWO NEXT AND PROBABLY WILL TAKE ENTIRE DAY TO SELECT JURY.

USA BUFORD STATED JUDGE HAS INDICATED THAT TRIAL OF GUEST, LACKEY AND PHILLIPS WILL COMMENCE TUESDAY, JULY FIVE NEXT, NINE THIRTY A.M.

END AND ACK PLS

WA RCH

FBI WASH DC

CLR●

FEDERAL BUREAU OF INVESTIGATION
U. S. DEPARTMENT OF JUSTICE
COMMUNICATIONS SECTION
JUN 30 1966
TELETYPE

NA
9:20 PM
6/30/66

FBI WASH DC

FBI ATLANTA

745 PM EST URGENT 6-30-66 THW

TO DIRECTOR (44-25873)

FROM ATLANTA (157-788)

PENVIC.

REATTEL JUNE TWENTYNINE LAST.

COURT CONVENED NINE AM JUNE THIRTY INSTANT. GOVERNMENT CALLED WITNESS WILLIE H. LANKFORD WHO TESTIFIED THAT HE AND HIS FAMILY OBSERVED ONE OF VICTIMS AT SCENE OF VICTIMS' WRECKED CAR CALLING FOR HELP AND THAT HE SUBSEQUENTLY SUMMONED HELP FOR THEM. WITNESSES M. S. CALLOWAY, GBI, DR. LARRY HOWARD, GA. STATE CRIME LAB, AND SA ROBERT M. ZIMMER, FBI LAB, TESTIFIED CONCERNING THE CRIME SCENE, AUTOPSY, AND EVIDENCE OBTAINED FROM VICTIMS' CAR. CLAUDE BENNETT, EMPLOYEE GUEST'S GARAGE, TESTIFIED CONCERNING ACTIVITY AT GUEST'S GARAGE ON MORNING JULY ELEVEN, SIXTYFOUR. LAST WITNESS CALLED BY THE GOVERNMENT BEFORE RESTING ITS CASE AT APPROXIMATELY ONE P. M. TODAY WAS THOMAS FRANKLIN STEPHENS WHO WAS SPRUNG AS A

END PAGE ONE

REC-92 44-25873-48
JUL 6 1966
55 JUL 11 1966

COMPLETE SURPRISE ON THE DEFENSE. IT WAS THE CONSENSUS OF OPINION OF THE PROSECUTING ATTORNEYS AND COURT OFFICIALS THAT STEPHENS MADE AN EXCELLENT WITNESS FOR THE GOVERNMENT. EARLY IN STEPHENS' TESTIMONY, BILL SHIPP, REPORTER, ATLANTA CONSTITUTION, WAS OVERHEARD WHISPERING TO OTHER REPORTERS IN THE COURTROOM "WHAT A BOMB." STEPHENS TESTIFIED TO THE BASIC INFORMATION FURNISHED BY HIM IN HIS SIGNED STATEMENT TO FBI AGENTS JUNE ONE LAST SET OUT IN REPORT OF SA JAMES B. HENDERSON, ATLANTA, JUNE THREE LAST. DEFENSE OFFERED ONLY FOUR WITNESES, ALL OF ALIBI NATURE. CLYDE HARPER AND RUTH BERTLING, WHO WERE ALIBI WITNESSES IN STATE MURDER TRIAL, TESTIFIED TO EFFECT THAT THEY SAW SIMS AND MYERS AT OPEN HOUSE RESTAURANT, ATHENS, DURING PERTINENT PERIOD PENN KILLING. GOLDIE COCHRAN, EX-WIFE OF TURNER, AND JAMES RUCKER ENGLAND, ADMITTED KLAN MEMBER, TESTIFIED THAT TURNER WAS AT A KLAN RALLY IN COVINGTON, GA., ON NIGHT OF BROAD ACRES APARTMENT INCIDENT. ON CROSS EXAMINATION ENGLAND NAMED OFFICERS OF ATHENS KKK. DEFENSE HAS

END PAGE TOW

RESTED CASE. GOVERNMENT ON JULY ONE NEXT WILL CALL TWO SAS IN REBUTTAL OF TESTIMONY OF HARPER AND BERTLIING SHOWING THAT. BY THEIR OWN STATEMENTS SIMS AND MYERS NOT AT OPEN HOUSE RESTAURANT IN ACCORDANCE WITH TESTIMONY OF BERTLING AND HARPER. COURT HAS ALLOWED GOVERNMENT AND DEFENSE ONE AND ONE HALF HOURS EACH FOR CLOSING ARGUMENTS. ANTICIPATED CASE WILL GO TO JURY AFTERNOON OF JULY ONE NEXT. DEFENSE ATTORNEY HAS WAIVED POLLING OF JURY AND AGREED TO RETURN OF A SEALED VERDICT INSTANT TRIAL. PROSPECTIVE JURORS FOR NEXT TRIAL BEING NOTIFIED APPEAR NINE THIRTY A. M., JULY TWO NEXT, FOR SELECTION JURY PANEL.

END

WA .. RCH

FBI WASH DC

TU CLR

C.c-Mr Conrad

July 6, 1966

GENERAL INVESTIGATIVE DIVISION

"Penvic" is the code name for the case involving the shooting of Lt. Col. Lemuel Penn in Athens, Ga., on 7/11/64. Six subjects were indicted on Federal Civil Rights Conspiracy charges. Three of the subjects were tried last week in U. S. District Court, Athens, and a sealed verdict rendered 7/2/66. The remaining three are currently being tried. The incidents referred to in attached are other racial incidents in which the subjects participated and are being introduced in the trial as part of the over-all conspiracy to intimidate and harass Negroes. The three subjects now on trial did not participate in the Crawfordville incident. Developments are being closely followed.

JWH:rk

FBI WASH DC

FEDERAL BUREAU OF INVESTIGATION
U. S. DEPARTMENT OF JUSTICE
COMMUNICATIONS SECTION
JUL 5 1966
TELETYPE

FBI ATLANTA

615 PM EST URGENT 7-5-66 IHW

TO DIRECTOR (44-25873)

FROM ATLANTA (157-788)

PENVIC.

Mr. Tolson
Mr. Delo...ch
W... ...ahr
Mr. ...per
Mr. Callahan
Mr. Conrad
Mr. Felt
Mr. G...
Mr. ...
Mr. Gale...an
Mr. Tavel
Mr. Trotter
Tele. Room
M... H...nes
Miss Gandy

REATTEL JULY ONE LAST.

JURY SEATED APPROXIMATELY TEN A. M. TODAY.

PROSECUTION AND DEFENSE PRESENTED OPENING STATEMENTS. TEN WITNESSES TESTIFIED RE VARSITY DRIVE- IN, JAMES POTTS, BROAD ACRES APARTMENTS, NEW JERSEY CAR INCIDENTS, AND A PART OF THE ROB WALKER INCIDENT. TRIAL HAS FOLLOWED SAME GENERAL PATTERN AS THAT OF LAST WEEK AND NO UNUSUAL DEVELOPMENTS. COURT ADJOURNED FIVE FIFTEEN P. M., TODAY.

ON JULY SIX NEXT, GOVERNMENT WILL CALL FIVE MORE WITNESSES TO FINISH PROOF IN ROB WALKER INCIDENT AND INCLUDE FRANK GILMORE INCIDENT. CRAWFORDVILLE INCIDENT NOT TO BE INCLUDED THIS TRIAL. ANTICIPATE GETTING INTO PENN MURDER ABOUT NOON, JULY SIX NEXT.

United States Attorney
USA OF OPINION INSTANT JURY, WHICH INCLUDES THREE BANKERS, MORE DESIRABLE THAN PREVIOUS JURY AND THAT WITNESSES INSTANT TRIAL HAVE MADE MORE FAVORABLE IMPRESSION FOR GOVERNMENT.

REC-92 44-2515-484

BUREAU WILL BE KEPT ADVISED.

4 JUL 7 1966

END

WA TMA

FBI WASH DC 55 JUL 12 1966

TU CLR

FEDERAL BUREAU OF INVESTIGATION
U. S. DEPARTMENT OF JUSTICE
COMMUNICATIONS SECTION
JUL 8 1966

TELETYPE

TU CLSX

FBI WASH DC

FBI ATLANTA

1021

Mr. Tolson
Mr. DeLoach
Mr. Mohr
Mr. Wick
Mr. Casper
Mr. Callahan
Mr. Conrad
Mr. Felt
Mr. G
Mr. R
Mr. Sullivan
Mr. Tavel
Mr. Trotter
Tele. Room
Miss Holmes
Miss Gandy

AM ESI URGENT 7/8/66 MRB

TO DIRECTOR 44-25873

FROM ATLANTA 157-788

OPENVIC

REMYTEL JULY SEVEN.

COURT RECONVENED NINE AM. GOVERNMENT INTRODUCED FIVE GUNS OBTAINED FROM SUBJECT GUEST AND RESTED ITS CASE. DEFENSE WITHOUT PRESENTING ANY WITNESSES RESTED AND CLOSING ARGUMENTS BEGAN NINE FIFTY AM. COURT WILL ALLOW ONE AND ONE- HALF HOURS EACH SIDE FOR CLOSING ARGUMENTS AND CASE EXPECTED TO GO TO JURY BY MID AFTERNOON.

BUREAU WILL BE ADVISED AS TO OUTCOME INCLUDING ANNOUNCEMENT OF JURY'S VERDICT IN TRIAL COMPLETED LAST WEEK, WHICH VERDICT HAS BEEN SEALED SINCE FURNISHED TO THE COURT.

END AND ACK PLS

REC 22 44-25873-1

3 JUL 12 1966

TMA

FBI WASH DC

57 JUL 14 1966

TUX

FEDERAL BUREAU OF INVESTIGATION
U. S. DEPARTMENT OF JUSTICE
COMMUNICATIONS SECTION
JUL 8 1966
TELETYPE

Mr. Tolson
Mr. DeLoach
Mr. Mohr
Mr. Wick
Mr. Casper
Mr. Callahan
Mr. Conrad
Mr. Felt
Mr. Gale
Mr. Rosen
Mr. Sullivan
Mr. Tavel
Mr. Trotter
Tele. Room
Miss Holmes
Miss Gandy

FBI WASH DC

FBI ATLANTA

350 PM EST URGENT 7/8/66 MRB

TO DIRECTOR 44-25873

FROM ATLANTA 157-788

PENVIC

REMYTEL TODAY.

ARGUMENTS COMPLETED PRIOR TO LUNCHEON RECESS AND JUDGE INSTRUCTED JURY AFTER LUNCH FROM TWO PM TO THREE EIGHTEEN PM. CASE THEN GIVEN TO JURY.

ATLANTA WILL SUTEL UPON RECEIPT OF VERDICTS IN BOTH TRIALS. JUDGE BOOTLE ADVISED USM THAT IF JURY RETURNS VERDICT AT REASONABLE TIME TODAY OR TONIGHT HE IS PREPARED TO SENTENCE SUBJECTS IMMEDIATELY.

END AND ACK PLS

TMA

FBI WASH DC

TUX

REC-19 44-25873-410

14 JUL 12 1966

6-14

CC-MR. ROSEN

56 JUL 15 1966

MR. DELOACH FOR THE DIRECTOR

FEDERAL BUREAU OF INVESTIGATION
U. S. DEPARTMENT OF JUSTICE
COMMUNICATIONS SECTION

JUL 8 1966

TELETYPE

Mr. Tolson
Mr. DeLoach
Mr. Mohr
Mr. Wick
Mr. Casper
Mr. Callahan
Mr. Conrad
Mr. Felt
Mr. Gale
Mr. Rosen
Mr. Sullivan
Mr. Tavel
Mr. Trotter
Tele. Room
Mr. Holmes
Miss Gandy

FBI WASH DC

FBI ATLANTA

350 PM EST URGENT 7/8/66 MRB

TO DIRECTOR 44-25873

FROM ATLANTA 157-788

PENVIC

REMYTEL TODAY.

ARGUMENTS COMPLETED PRIOR TO LUNCHEON RECESS AND JUDGE INSTRUCTED JURY AFTER LUNCH FROM TWO PM TO THREE EIGHTEEN PM. CASE THEN GIVEN TO JURY.

ATLANTA WILL SUTEL UPON RECEIPT OF VERDICTS IN BOTH TRIALS. JUDGE BOOTLE ADVISED USM THAT IF JURY RETURNS VERDICT AT REASONABLE TIME TODAY OR TONIGHT HE IS PREPARED TO SENTENCE SUBJECTS IMMEDIATELY.

END AND ACK PLS

TMA

FBI WASH DC

TUX

REC-19 44-25873-490

14 JUL 12 1966

6-14

CC-MR. ROSEN 253

56 JUL 15 1966

MR. DELOACH FOR THE DIRECTOR

UNITED STATES GOVERNMENT

Memorandum

1 - Mr. Conrad
1 - Mr. Zimmers

TO : Mr. Conrad

DATE: July 11, 1966

1 - Mr. Herndon
1 - Office, 7133

FROM : R. H. Jevons

SUBJECT: DENVIC

On June 30, 1966, and again on July 6, 1966, SA Robert M. Zimmers of the Laboratory testified in Athens, Georgia, at the two trials involving six subjects with the violation of civil rights growing out of the Bureau's investigation of the murder of Lemuel A. Penn.

At the first trial the subjects being tried were Sims, Meyers and Turner. Numerous witnesses testified as to the abuses administered to them by these individuals. At this trial SA Zimmers testified relative to his examination of the automobile in which Lemuel Penn was murdered and his conclusions concerning the materials found therein.

At the second trial his testimony was relatively the same as that just referred to. At the second trial subjects Lackey, Phillips and Guest were tried for their participation in Ku Klux Klan activities where Negros were victims of numerous abuses.

The jury returned a sealed verdict in the first trial which is to remain sealed until the verdict is obtained in connection with the second trial. The disposition of these cases, therefore, will not be known until the second trial has been completed.

ACTION: None. For information only.

44-25873
1 - Mr. Rosen
1 - Mr. Wick (Attention: Mr. M. A. Jones, Room 4264)

REC- 19 44-25873-487

16 JUL 12 1966

RMZ:bas
(7)

54 JUL 18 1966

FBI/DOJ

FBI/DOJ

FBI WASH DC

FEDERAL BUREAU OF INVESTIGATION
U.S. DEPARTMENT OF JUSTICE
COMMUNICATIONS SECTION
JUL 9 1966
TELETYPE

FBI ATLANTA

10:15 AM EST 7-9-66 URGENT BCE

TO DIRECTOR (44-25873)

FROM ATLANTA (157-788)

Mr. Tolson
Mr. Belmont
Mr. Mohr
Mr. Wick
Mr. Casper
Mr. Callahan
Ms. Conrad
Mr. Felt
Mr. Gale
Mr. Rosen
Mr. Sullivan
Mr. Tavel
Mr. Trotter
Tele. Room
Miss Holmes
Miss Gandy

mm

PENVIC

MIDDLE DISTRICT GEORGIA

JUDGE W. A. BOOTLE, ~~MDGA~~ AT ATHENS, GA. THIS DATE SENTENCED CECIL WILLIAM MYERS TO CUSTODY OF ATORNEY GENERAL FOR TEN YEARS. JUDGE BOOTLE ALSO SENTENCED JOSEPH HOWARD SIMS TO THE CUSTODY OF THE ATTORNEY GENERAL FOR TEN YEARS. HERBERT GUEST WAS SENTENCED BY JUDGE BOOTLE ON FOUR COUNTS OF DISPERSING AMTHETAMINE SULFATE TABLETS TO THE CUSTODY OF THE AG FOR SIX MONTHS ON EACH COUNT, SENTENCE TO RUN CONSECUTIVELY. JUDGE BOOTLE IN LIEU OF NOTICE OF APPEAL IN FORMA PAUPERIS BY MYERS AND SIMS INCREASED THEIR BOND FROM TWENTYFIVE THOUSAND TO THIRTYFIVE THOUSAND DOLLARS. SIMS, MYERS, AND GUEST TAKEN INTO CUSTODY BY UNITED STATES MARSHAL ~~USM~~ IMMEDIATELY AFTER SENTENCING.

END.

WA...LLD

FBI WASH DC

TU CLR

REC-19
44-25873-488

14 JUL 12 1966

Included in note and prior T/T

MR. DELOACH FOR THE DIRECTOR

56 JUL 14 1966

July 7, 1966

GENERAL INVESTIGATIVE DIVISION

"Penvic" is the code name of the case involving the shooting of Lt. Col. Lemuel Penn near Athens, Ga., on 7/11/64. Six subjects were indicted on Federal Civil Rights Conspiracy charges. Three subjects were tried last week and a sealed verdict rendered 7/2/66. The three remaining subjects are now on trial. The Rob Walker and Frank Gilmore incidents are other racial incidents in which subjects were involved and are being introduced as part of the over-all conspiracy. Subject Edward Guest was recently charged by the Food and Drug Administration with selling "bennie" pills to college students and he pled guilty to the charge. SA Brom participated in the initial interviews of subject James Lackey and obtained signed statements in which Lackey admitted driving the car from which subjects Sims and Meyers fired the fatal shots. The statements and interview logs clearly show that Lackey was properly advised of his rights prior to confession and arrest.

JWH:ak

FEDERAL BUREAU OF INVESTIGATION
U. S. DEPARTMENT OF JUSTICE
COMMUNICATIONS SECTION
JUL 6 1966
TELETYPE

no action 7/6/66 wmr
9:10 P.M.

FBI WASH DC

FBI ATLANTA

725PM EST URGENT 7-6-66 JDW

TO DIRECTOR /44-25873/

FROM ATLANTA /157-788/

PENVIC.

REATTEL JULY FIVE LAST.

COURT CONVENED NINE A.M. TODAY.

PROSECUTION CONTINUED WITH WITNESSES TO COMPLETE PROOF IN ROB WALKER INCIDENT AND THEN CALLED FOUR WITNESSES TO PROVE FRANK GILMORE INCIDENT. TRIAL CONTINUED TO RUN SMOOTHLY. PRIOR TO BREAK FOR LUNCH AT TWELVE FORTY- FIVE P.M., GOVERNMENT PROGRESSED WELL INTO PENN MURDER BY CALLING WITNESSES COLONEL JOHN DANIEL HOWARD, PROFESSOR W. H. LANKFORD, AND GBI AGENT M. S. GALLAWAY TO LAY THE BASIC GROUNDWORK IN THE PENN MURDER.

COURT CONTINUED AT TWO P.M. WITH WITNESSES IN PENN CASE FOLLOWING THE SAME PATTERN AS THAT IN THE PREVIOUS TRIAL. DR. LARRY HOWARD, STATE CRIME LAB, AND SA ZIMMERS, FBI LAB, COMPLETED THE BASIC GROUNDWORK.

44-25873-411

END PAGE ONE

REC-43
118 JUL 12 1966
53 JUL 14 1966

THE GOVERNMENT THEN CALLED CLAUDE BENNETT, NIGHT MECHANIC, GUEST GARAGE, TO TESTIFY RE ACTIVITY AT GUEST GARAGE EARLY A.M., JULY ELEVEN, SIXTYFOUR. BENNETT WAS FOLLOWED BY THOMAS FRANKLIN STEPHENS' TESTIMONY RE STATEMENTS MADE TO HIM BY GUEST AND PHILLIPS.

HOWARD LEWIS, INSPECTOR, FOOD AND DRUG ADMINISTRATION, TESTIFIED THAT DURING INVESTIGATION OF PILL CASE AGAINST GUEST HE WAS IN GUEST'S GARAGE, AT WHICH TIME GUEST POINTED TO A SHOTGUN AND SAID IT WAS GUN THEY USED TO KILL NEGROES. AT APPROXIMATELY FIVE P.M., SA CLARENCE A. BROM CALLED AS WITNESS AND ATTEMPTED TO INTRODUCE LACKEY'S STATEMENTS. DEFENSE OBJECTED AND JURY DISMISSED FOR REMAINDER OF DAY. IN ABSENCE OF JURY, DEPARTMENTAL ATTORNEY ST. JOHN BARRETT, PRESENTED ARGUMENTS RE ADMISSABILITY OF LACKEY'S STATEMENTS. SA BROM QUESTIONED AT LENGTH BY DEFENSE RE DETAILS OF TAKING LACKEY'S STATEMENTS.

DEFENSE RESTED, AND AT SIX FIFTY P.M., JUDGE BOOTLE ADJOURNED COURT UNTIL NINE A.M. SEVEN SEVEN NEXT, AT WHICH TIME IT IS ASSUMED HE WILL RULE ON ADMISSABILITY OF LACKEY'S STATEMENTS.

END AND ACK PLS

WA RCH

FBI WASH DC

CLRX

PP Wash Post

July 7, 1966

GENERAL INVESTIGATIVE DIVISION

"Penvic" is the code name of the case involving the shooting of Lt. Col. Lemuel Penn near Athens, Ga., on 7/11/6[illegible] Six subjects were indicted on Federal Civil Rights Conspiracy charges. Three subjects were tried last week and a sealed verdict rendered 7/2/66. The three remaining subjects are now on trial. SA's Brom & Simpson interviewed subject Lackey and obtained signed statements in which Lackey admitted driving the car from which two other subjects fired the fatal shots. On 7/6/66, the defense objected to introduction of Lackey's statements when SA Brom was called as a witness. The attached teletype reflects that Judge Bootle has ruled the Lackey statements admissible.

JJB:slk

FEDERAL BUREAU OF INVESTIGATION
U. S. DEPARTMENT OF JUSTICE
COMMUNICATION SECTION
JUL 7 1966
TELETYPE

FBI WASH DC

FBI ATLANTA

1:42PM EST URGENT 7/7/66 JFE

TO: DIRECTOR, FBI 44-25873

FROM: ATLANTA 157-788

OPENVIC.

RE ATLANTA TELETYPE DATED JULY SIX, LAST.

ARGUMENTS ON ADMISSIBILITY ~~MIGABILITY~~ OF LACKEY STATEMENTS CONTINUED FROM NINE O'CLOCK A.M. TO ELEVEN FORTY FIVE A.M. TODAY. AT CONCLUSION OF ARGUMENTS AND BASED UPON TESTIMONY OF SAS JACK B. SIMPSON AND CLARENCE A. BROM AND DEFENDANT LACKEY IN ABSENCE OF JURY, JUDGE BOOTLE RULED LACKEY STATEMENTS ADMISSIBLE. JUDGE RULED MIRANDA DECISION NOT APPLICABLE, AS LACKEY NOT IN CUSTODY AND NOT DEPRIVED OF HIS FREEDOM AT TIME FBI AGENTS OBTAINED STATEMENTS. JUDGE BOOTLE ALSO RULED STATEMENTS OF LACKEY WERE FREE AND VOLUNTARY AND NOT MADE AS A RESULT OF ANY INDUCEMENT OR OFFER OF REWARD. ADMISSION OF LACKEY STATEMENTS OBVIOUSLY MAJOR BREAKTHROUGH IN INSTANT TRIAL. JURY CALLED BACK IN AT TWELVE ZERO FIVE P.M. AND TRIAL CONTINUING WITH SA BROM TESTIFYING REGARDING LACKEY STATEMENTS. BUREAU WILL BE ADVISED OF FURTHER DEVELOPMENTS LATER TODAY.

REC 5 157-788-472

JUL 12 1966

END AND ACK

WA...RCH

MR. DELOACH FOR THE DIRECTOR

FBI WASH DC JUL 14 1966

57 JUL 14 1966

TU CI

July 9, 1966

GENERAL INVESTIGATIVE DIVISION

"Penvic" is the code name of the case involving the shooting of Lieutenant Colonel Lemuel Penn at Athens, Georgia, July 11, 1964. Six subjects were indicted by a Federal grand jury on Federal Civil Rights conspiracy charges. Subjects Sims, Myers and Turner were tried last week and a sealed verdict rendered July 2, 1966. Attached sets forth jury verdict of both trials of the six subjects. Sims and Myers did the shooting. On July 9, 1966, Sims and Myers each given maximum sentence of ten years imprisonment. Subject Guest sentenced to six months on each of four counts for food and drug act violations. Sentences to run consecutively. Subjects Myers, Guest and Sims taken into custody by U. S. Marshal.

CWC:pwl

COPY SENT TO MR. TOLSON

FEDERAL BUREAU OF INVESTIGATION
U. S. DEPARTMENT OF JUSTICE
COMMUNICATIONS SECTION
JUL 9 1966
TELETYPE

FBI WASH DC

FBI ATLANTA

1127PM EST URGENT 7-8-66 JDW

TO DIRECTOR /44-25873/

FROM ATLANTA /157-788/

PENVIC.

REMYTELS TODAY.

AT ELEVEN ZERO SIX P.M., JURY RETURNED VERDICT OF NOT GUILTY AS TO SUBJECTS GUEST, LACKEY, AND PHILLIPS. JUDGE THEN ANNOUNCED VERDICT FOR PREVIOUS TRIAL AS GUILTY AS TO SIMS AND MYERS AND NOT GUILTY AS TO TURNER.

SIMS AND MYERS TO BE SENTENCED NINE A.M. TOMORROW.

END AND ACK PLS

WA JMS

FBI WASH DC

CLR

REC-13 44-25873-

EX-103

JUL 13 1966

54 JUL 18

MR. DELOACH FOR THE DIRECTOR

UNITED STATES GOVERNMENT

Memorandum

TO : Mr. Conrad

DATE: July 6, 1966

FROM : W. D. Griffith

SUBJECT: (C) PENVIC
REQUEST FOR TESTIMONY

b7c

Special Agent [redacted] Night Supervisor, advised that at 6:46 P.M., 7/5/66, he received a long distance call from SAC Joseph K. Ponder, Atlanta Division, requesting the appearance of Special Agent Robert M. Zimmers of the Laboratory for testimony in the above case. Ponder stated that Zimmers should arrive in Athens, Georgia, by noon 7/6/66. He requested that he be called after travel arrangements had been effected so that he could arrange prompt transportation of Zimmers from the airport to the courtroom.

b7c

After advising Zimmers and Inspector [redacted] of the above, SAC Ponder was contacted at 7:19 P.M. and told that Zimmers would arrive in Athens, Georgia, via Southern Airways, Flight 184, at 11:20 A.M. SAC Ponder stated that he would arrange transportation for Zimmers.

Section Chief Jevons and Night Supervisor [redacted] b7c
Division 6, advised of the above.

RECOMMENDATION: None. For information.

1 - Mr. Mohr
1 - Mr. DeLoach
1 - Mr. Rosen
1 - Mr. Conrad
1 - Mr. Jevons
1 - Mr. Zimmers

JHM:fa (7)

REC- 82 - 492

4 JUL 1966

216

PERS. REC. UNIT

1 - Office, 7133
7/5/66
1 - Mr. Zimmers

Airtel

To: SAC, Atlanta (157-788)

From: Director, FBI (44-45873)

PENVIC

Special Agent Robert M. Zimmers will depart Washington at 5:55 P.M., Wednesday, July 6, enroute Athens due to arrive Athens at 8:53 P.M., via Southern Airways Flight 116 unless advised to contrary by your office.

RMZ:bas
(5)

MAILED 11
JUL 5 1966
COMM-FBI

EX-103
REC-87 44-45873-11

18 JUL 12 1966

Tolson
DeLoach
Mohr
Wick
Casper
Callahan
Conrad
Felt
Gale
Rosen
Sullivan
Tavel
Trotter
Tele. Room
Holmes
Gandy

69 JUL 11 1966

MAIL ROOM TYPE UNIT

NO ACTION
10:12 P.M. 7/7/66
W.A.F.

RAL BUREAU OF INVESTIGATION
U. S. DEPARTMENT OF JUSTICE
COMMUNICATIONS SECTION
JUL 7 1966

TELETYPE

FBI WASH DC

FBI ATLANTA

811PM EST URGENT 7-7-66 JDW

TO DIRECTOR /44-25873/

FROM ATLANTA /157-788/ /P/ 2P

Mr. T...
Mr. D...
Mr. M...
Mr. W...
Mr. ...
Mr. ...
Mr. ...
Mr. ...
Mr. ...
Mr. ...
Mr. ...
Mr. ...
Tele. Room
...
Miss Gandy

McGowan

PENVIC.

RE BU TELEPHONE CALL TODAY.

ON JULY SIX LAST, SA CLARENCE A. BROM CALLED AS WITNESS BY GOVERNMENT IN ATTEMPT INTRODUCE LACKEY STATEMENTS. DEFENSE OBJECTED AND JURY DISMISSED. SA BROM THEN IN ABSENCE OF JURY AND IN RESPONSE TO DIRECT QUESTIONING BY DEFENSE REGARDING THE THREE THOUSAND DOLLARS MENTIONED BY SA JACK B. SIMPSON TO LACKEY IN INITIAL INTERVIEW OF JULY TWENTYNINE, SIXTYFOUR, TESTIFIED THAT SA SIMPSON IN INITIAL INTERVIEW MADE AN OFFHAND REMARK THAT IN CASES WHERE THE GOVERNMENT USES A LOT OF MANPOWER AT GREAT EXPENSE THE GOVERNMENT HAS IN THE PAST PAID AS MUCH AS THREE THOUSAND DOLLARS FOR INFORMATION.

ST-114

REC-18 44-25873-491

ON JULY SEVEN INSTANT, SA SIMPSON IN ABSENCE OF JURY AND IN RESPONSE TO DIRECT QUESTIONING BY DEFENSE TESTIFIED ~~TO SUBSTANTIALLY~~ THE SAME INFORMATION REGARDING THE THREE THOUSAND DOLLARS ~~HE~~ THAT TESTIFIED TO BY SA BROM ON JULY SIX LAST. ~~DEFENDANT~~ LACKEY IN ABSENCE OF JURY TESTIFIED THAT THE MENTION BY SA SIMPSON OF THE

END PAGE ONE

57 JUL 25 1966

COPY TO - HINES

THREE THOUSAND DOLLARS IN THE INITIAL INTERVIEW DID NOT SOAK IN UNTIL LATER THAT HE MIGHT GET SOMETHING OUT OF IT.

ON JULY SEVEN INSTANT, SA BROM IN PRESENCE OF JURY TESTIFIED TO SUBSTANTIALLY SAME INFORMATION THAT HE TESTIFIED TO ON JULY SIX LAST.

JUDGE BOOTLE ON JULY SEVEN INSTANT IN REGARD TO THE THREE THOUSAND DOLLARS RULED THAT BASED UPON TESTIMONY OF SA'S BROM AND SIMPSON AND DEFENDANT LACKEY THAT NO PROMISE OF REWARD WAS HELD OUT. JUDGE BOOTLE ALSO RULED THAT THE STATEMENT OF AGENT SIMPSON AS TO HISTORICAL FACT IS PROBABLY PRETTY WELL KNOWN PARTICULARLY IN INCOME TAX TYPE CASES. JUDGE BOOTLE ALSO RULED THAT "MR. LACKEY DID NOT MAKE ANY STATEMENT OR CONFESSION AS A RESULT OF ANY SUCH OFFER."

END AND ACK FOR TWO MES PLS

WA JPM FOR 2 FROM AT

FBI WASH DC

CLR

No action 10:40 P.M. 7/7/66 W.M.F.

FEDERAL BUREAU OF INVESTIGATION
U. S. DEPARTMENT OF JUSTICE
COMMUNICATIONS SECTION

JUL 7 1966

TELETYPE

Mr. Tolson
Mr. DeLoach
Mr. Mohr
Mr. Wick
Mr. Casper
Mr. Callahan
Mr. Conrad
Mr. Felt
Mr. Gale
Mr. Rosen
Mr. Sullivan
Mr. Tavel
Mr. Trotter
Tele. Room
Miss Holmes
Miss Gandy

FBI WASH DC

FBI ATLANTA

HOLD FOR TWO MES PLS

810PM EST URGENT 7-7-66 JDW

TO DIRECTOR /44-25873/

FROM ATLANTA /157-788/ P

PENVIC

RE ATLANTA TEL JULY SEVEN INSTANT.

GOVERNMENT SUCCESSFUL IN GETTING PERTINENT LACKEY STATEMENTS INTO EVIDENCE THROUGH SA CLARENCE A. BROM. GOVERNMENT ALSO SUCCESSFUL IN GETTING INTO EVIDENCE STATEMENTS OF HERBERT GUEST BY SA WILLIAM J. WATRY, AND ORAL STATEMENT OF DENVER PHILLIPS BY SA ROBERT R. PERRY.

JUDGE BOOTLE OVERRULED OBJECTION OF DEFENSE TO ADMITTING ALL OF STATEMENTS.

USA BUFORD ANTICIPATES RESTING GOVERNMENT CASE SOMETIME A.M., JULY EIGHT NEXT.

END AND HOLD FOR ONE PLS

EX-117

REC-18 44-25873-495

JUL 19 1966

FBI JUL 22 1966

COPY TO- HINES

FBI

Transmit the following in _____ Date: 7/11/66

(Type in plaintext or code)

Via AIRTEL AIRMAIL

(Priority)

TO: DIRECTOR, FBI (44-25873)
ATTENTION: CRIME RECORDS DIVISION

FROM: SAC, ATLANTA (157-788) (P)

RE: PENVIC

Mr. Tolson
Mr. DeLoach
Mr. Mohr
Mr. Wick
Mr. Casper
Mr. Callahan
Mr. Conrad
Mr. Felt
Mr. Gale
Mr. Rosen
Mr. Sullivan
Mr. Tavel
Mr. Trotter
Tele. Room
Miss Holmes
Miss Gandy

Re Atlanta teletypes to Bureau 7/8 and 9/66.

Retels reveal that at 11:00 PM, 7/8/66, the Jury returned a verdict of not guilty as to subjects GUEST, LACKEY and PHILLIPS. Judge BOOTLE, USDC, MDGA, Athens, Ga., then announced the verdict of the previous trial, it being guilty as to subjects SIMS and MYERS, and not guilty as to TURNER. On 7/9/66, Judge W. A. BOOTLE sentenced CECIL WILLIAM MYERS and JOSEPH HOWARD SIMS to the custody of the Attorney General for a period of ten (10) years.

As the Bureau is well aware, the trials in this case received nationwide attention. The results will undoubtedly be recorded as a highlight in legal history, but of possibly more importance, they represent a major step forward in the Government's efforts to enforce Civil Rights laws in the South.

FLOYD M. BUFORD, USA, Macon, Ga., without question, was the "Quarterback" in the hard fought battle which ended in a victory for the Government.

For weeks prior to and during the course of the trials, Mr. BUFORD literally buried himself in the tremendous volumes of valuable information prepared by the FBI. He devoted his full time and energies to the preparation and

Ltr to Buford 7-18-66 DRC:acp

REC-79 44-25873-111

(3) - Bureau
2 - Atlanta

ADDENDUM: GENERAL INVESTIGATIVE DIVISION 7-14-66 p. 2a EJM:cry

JBH/hld
(5)

JUL 13 1966

Approved: _____ Sent _____ M Per _____

Special Agent in Charge

CRIME RESEARCH

trials. His work day in this connection was ten to twelve hours, including Saturdays, Sundays, and the 4th of July Holiday. As Mr. BUFORD's work progressed, and particularly after the trial began, there was no doubt in the minds of the experienced Agents who worked with him, that he had his facts particularly well organized and the trial strategy planted firmly in his mind.

His approach to the preparation for the trials was logical and practical, and his respect for and confidence in the FBI was evident in many ways. In certain instances where requests by less experienced Departmental Attorneys for investigation or action by the FBI seemed impractical or of no real value, Mr. BUFORD was quick to support and uphold the position of the Bureau.

During the course of the trials, court officials, news men, and defense attorneys alike were overheard to make comments in praise of Mr. BUFORD's outstanding performance in the handling of witnesses and evidence and in his arguments to the Jury. Upon completion of Mr. BUFORD's argument to the Jury in the second trial, St. JOHN BARRETT, Departmental Attorney, made the brief comment, "A masterpiece". Experienced Agents who worked closely with Mr. BUFORD are definitely of the opinion that he did an outstanding job.

At the completion of the second trial, I personally commended Mr. BUFORD and during our conversation he asked me to "Tell Mr. Hoover that the dignity and reputation of the FBI were upheld throughout the trials."

As the Bureau is probably aware, the Attorney General and the President, in a joint telephone call, have personally commended Mr. BUFORD for the successful prosecution.

It is felt that with the foregoing in mind the Director may desire to address a communication to Mr. BUFORD both commending him for the successful handling of this case, and expressing his appreciation to Mr. BUFORD for his continued support of and cooperation with the Bureau.

///

ADDENDUM: GENERAL INVESTIGATIVE DIVISION EJM:cry 7-14-66

This is the case involving the murder of Lt. Col. Lemuel Penn, Negro, Washington, D. C., educator on a rural road in Northeast Georgia on 7-11-64. On 7-8-66 Cecil William Myers and Joseph Howard Sims were convicted in U. S. District Court, Athens, Georgia, for violation of Title 18, Section 241, U. S. Code. On 7-9-66 Myers and Simswere each sentenced to the maximum prison sentence under the law of ten years.

In connection with this outstanding investigation and prosecution, SAC Atlanta has described USA Floyd M. Buford, who handled the prosecution, as the "Quarterback" in that his approach to the preparation for the trial was logical and practical and his respect for and confidence in the FBI was evident in many ways. At the completion of the second trial SAC Atlanta personally commended Mr. Buford and Mr. Buford requested the SAC to "Tell Mr. Hoover that the dignity and reputation of the FBI were upheld throughout the trials." It is noted that the Attorney General and the President in a joint telephone call personally commended Mr. Buford for the successful prosecution.

RECOMMENDATION OF SAC ATLANTA

SAC Atlanta recommends that a communication be directed to Mr. Buford over the Director's signature commending him for the successful handling of the prosecution of this case and expressing appreciation for Mr. Buford's continued support of and cooperation with the Bureau.

RECOMMENDATION OF GENERAL INVESTIGATIVE DIVISION

We have had cordial relations with USA Buford and Bureau files contain no information which would preclude directing such a letter to him.

General Investigative Division agrees with the recommendation of the SAC Atlanta that a letter be forwarded to Mr. Buford in line with the above.

This should be forwarded to the Crime Records Division for appropriate handling.

United States Department of Justice

UNITED STATES ATTORNEY
MIDDLE DISTRICT OF GEORGIA
Macon, Georgia 31202
July 12, 1966

(OPTIONAL)

BT

Mr. J. Edgar Hoover, Director
Federal Bureau of Investigation
Washington, D. C. 20530

Dear Mr. Hoover:

Once again I feel I am justified in writing to you and making my report concerning my views of certain agents in your department and their performance of duties.

As United States Attorney for the Middle District of Georgia, I had the responsibility of prosecuting six members of the Ku Klux Klan who were indicted under Section 241 of Title 18, United States Code. The jury convicted Howard Sims and Cecil Myers and acquitted four others. It is my view that Sims and Myers were the "trigger men" who brought about the death of Lemuel Penn while he was traveling in interstate transportation on July 11, 1964. Of course, you are aware that many F. B. I. Agents participated in the investigation, attended court and testified in the trial of these cases. As expected all agents of your department performed their duties in a most able manner.

In this case, as in all cases where the F. B. I. participated in the prosecution and in which I had a part in the prosecution, I was proud to be on the side of the F. B. I. For fifteen years I have been a federal prosecutor. I suspect that I have met and have known more F. B. I. agents than any other active federal prosecutor. Each agent of your department that I have met and worked with has my utmost respect and confidence.

There is one particular agent that I feel I should commend to you by name and make a special observation about him. Mr. Robert Kane has been the Resident Agent

Mr. Tolson
Mr. DeLoach
Mr. Mohr
Mr. Wick
Mr. Casper
Mr. Callahan
Mr. Conrad
Mr. Felt
Mr. Gale
Mr. Rosen
Mr. Tavel
Mr. Trotter
Tele. Room
Miss Holmes
Miss Gandy

JUL 15 1966

5 Ltr to Bufd + Kane
7-19-66
JM DFC/jla/ltf
55 JUL 28 1966

44-25873
NOT RECORDED
29 JUL 22 1966

3 JUL 15 1966

at Athens, Georgia, for quite a few years. All of the incidents relating to this conspiracy took place within his jurisdiction. Mr. Kane has spent many hours working on this case that no one knew about. Being the local agent, he was subjected to everyday problems and tensions that other agents did not have to face.

I began my preparation in the trial of this case several weeks in advance. Of course, there were several attorneys from the Civil Rights Division of the Department of Justice assisting me. However, Mr. Kane's assistance in the preparation of the case was most valuable to me. Furthermore, Mr. Kane sat at my table during the trial of the case and his knowledge of the case made a major contribution to the proper presentation of the evidence because he was constantly available to me for advice and assistance. Over the years I have found Mr. Kane to be a most dependable, trustworthy and reliable agent. In this case, as well as in all cases he has investigated in the Middle District of Georgia, I find that he has upheld the high and fine tradition of the F. B. I.

It is with genuine pleasure that I make this report to you and I hope that you will feel that you are in a position to give appropriate recognition to Mr. Kane for a job well done.

In closing, I would like to state to you again that I feel that the F. B. I. should be proud of its investigation in this matter.

With warm personal regards, I am

Sincerely yours,

Floyd M. Buford

Floyd M. Buford
United States Attorney

FMB/jep

cc: Mr. Joseph K. Ponder
Agent in Charge
Federal Bureau of Investigation
Atlanta, Georgia

0-19 (Rev. 5-4-66)

Tolson
DeLoach
Mohr
Bishop
Casper
Callahan
Conrad
Felt
Gale
Rosen
Sullivan
Tavel
Trotter
Tele. Room
Holmes
Gandy

Jailed Klansman Charged In Assault on His Wife

ATHENS, Ga., July 12 (AP) —A Clarke County grand jury Monday indicted Joseph Howard Sims, a Ku Klux Klansman, on a charge of assault with intent to murder his wife.

Sims is one of two Athens area men sentenced last week to 10 years in prison after conviction on Federal charges of conspiring to deprive Negroes of their constitutional rights. He is now in the county jail.

Mrs. Sims, a 35-year-old mother of eight, was shot in the face May 5 while working as a nurse's aide at an Athens hospital. Police Chief E. E. Hardy said at that time Sims had been separated from his wife about two weeks.

44-25273-A
NOT RECORDED
184 JUL 19 1966

The Washington Post and Times Herald
The Washington Daily News
The Washington Evening Star
New York Daily News
New York Herald Tribune
New York Post
The New York Times
New York World Journal
New York World Journal Tribune
The Baltimore Sun
The Worker
The New Leader
The Wall Street Journal
The National Observer
People's World

Date JUL 14 1966

44-25273

56 JUL 21 1966
F 248

63 (Rev. 9-17-65)

FEDERAL BUREAU OF INVESTIGATION

REPORTING OFFICE	OFFICE OF ORIGIN	DATE	INVESTIGATIVE PERIOD
ATLANTA	ATLANTA	7/25/66	6/24 - 7/18/66

TITLE OF CASE

HERBERT GUEST;
ET AL;
LT. COL. LEMUEL A. PENN, DECEASED,
USAR SN 0348661; ET AL - VICTIMS

REPORT MADE BY: SA [redacted] TYPED BY:

CHARACTER OF CASE

CIVIL RIGHTS -
NATIONAL FIREARMS ACT

b7c

REFERENCE:

Report of SA [redacted] Atlanta, 6/24/66.

b7c

- P -

ENCLOSURES

TO BUREAU

One (1) disposition sheet each on CECIL WILLIAM MYERS, JOSEPH HOWARD SIMS, GEORGE HAMPTON TURNER, HERBERT GUEST, JAMES SPERGON LACKEY, DENVER WILLIS PHILLIPS; and three (3) copies each of parole reports for JOSEPH HOWARD SIMS and CECIL WILLIAM MYERS.

LEADS

DISPOSITION SHEET ATTACHED AND HANDLED

Case has been: Pending over one year ☐ Yes ☐ No; Pending prosecution over six months ☐ Yes ☐ No

APPROVED JKP USN SPECIAL AGENT IN CHARGE

COPIES MADE:

5 - Bureau (44-25873)(Enc. 12)
1 - USA, Macon
3 - Atlanta (157-788)

6 ENCLOSURE

6-2AUG 30 1966

DO NOT WRITE IN SPACES BELOW

1/4- 3577 - 4497 REC-61

14 JUL 28 1966

Dissemination Record of Attached Report

Agency	CRD			
Request Recd.	8/3			
Date Fwd.	8-23-66			
How Fwd.	8/9 (G)			
By	[illegible]			

Notations

2 of each
two parole
report
Bureau of Prisons

SEP 6 1966 C.D.

7 SEP 26 1966 CRD

AT 157-788

ATLANTA

AT ATHENS, GEORGIA. Will, in view of the unusual interest in this matter, follow and report result of subject SIMS'-plea of guilty to the State charge of Assault With Intent to Murder. SIMS entered plea of guilty to this charge on 7/18/66.

AT MACON, GEORGIA. Will follow and report results of appeal of conviction of subjects SIMS and MYERS.

ADMINISTRATIVE

STATISTICAL ACCOMPLISHMENTS

Atlanta is claiming two convictions with this report.

FD-204 (Rev. 3-3-59)

UNITED STATES DEPARTMENT OF JUSTICE
FEDERAL BUREAU OF INVESTIGATION

Copy to: 1 - USA, Macon, Georgia

b7c

Report of: SA [redacted] Office: Atlanta, Georgia
Date: July 25, 1966

Field Office File #: 157-788 Bureau File #: 44-25873

Title: HERBERT GUEST;
ET AL;
LT. COL. LEMUEL A. PENN, DECEASED,
USAR SN 0348661; ET AL - VICTIMS

Character:
CIVIL RIGHTS - NATIONAL FIREARMS ACT

Synopsis: Subjects SIMS, MYERS and TURNER tried by jury in USDC, Athens, Ga., on indictment charging conspiracy to violate Section 241, Title 18, USC. On 7/1/66, jury returned verdict of guilty as to SIMS and MYERS, and not guilty as to TURNER. On 7/9/66, SIMS and MYERS sentenced in USDC, Athens, Ga., to the CAG for a period of ten years each. SIMS' sentence to begin upon disposition of State charge presently outstanding against him at Athens, Ga. Attorney for SIMS and MYERS filed notice of appeal on 7/9/66, and appeal bond set at $35,000.00 each. Subjects GUEST, LACKEY and PHILLIPS tried by jury in USDC, Athens, Ga., on indictment charging conspiracy to violate Section 241, Title 18, USC. On 7/8/66 jury returned verdict of not guilty as to GUEST, LACKEY and PHILLIPS. USA, Macon, Ga., does not plan to re-indict GUEST on National Firearms Act.

- P -

DETAILS:

AT ATHENS, GEORGIA

The Civil Rights-Conspiracy case against subjects SIMS, MYERS and TURNER was called in U. S. District Court, June 27, 1966, on which date the selection of a jury began. Trial of these three defendants was concluded on July 1, 1966, and the case was given to the jury on that date. The jury

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returned a sealed verdict on July 1, 1966. This verdict was not announced until July 8, 1966, and after the jury in the trial against subjects GUEST, LACKEY and PHILLIPS had returned a verdict. The verdict of the jury in the case against subjects SIMS, MYERS and TURNER, which was actually returned on July 1, 1966, was guilty as to subjects SIMS and MYERS, and not guilty as to subject TURNER.

On July 9, 1966, Judge W. A. BOOTLE, U. S. District Court, Athens, Georgia, sentenced subjects SIMS and MYERS to the custody of the Attorney General for a period of ten years each, after they had been found guilty of conspiracy to violate Section 241, Title 18, U. S. Code. Judge BOOTLE took notice of the fact that SIMS was actually a State prisoner prior to and during the course of the trial in U. S. District Court, and at the time SIMS was sentenced by Judge BOOTLE he specified that the sentence would begin on the disposition of the outstanding State charge. The State charge referred to is the charge of Assault With Intent to Murder outstanding at Athens, Clarke County, Georgia, which arose out of SIMS' shooting of his wife on May 5, 1966.

Upon pronouncement of sentences, on July 9, 1966, the U. S. Marshal took custody of SIMS and MYERS and they were incarcerated in the Clarke County Jail, Athens, Georgia. SIMS was subsequently released to local authorities and returned to the State Mental Hospital, Milledgeville, Georgia.

After sentencing of SIMS and MYERS, and on July 9, 1966, their attorney, JIM HUDSON, Athens, Georgia, filed notice of appeal for both defendants. The notice of appeal was in the form of a motion of forma pauperis for both defendants. Judge BOOTLE allowed the motion and stated it would be forwarded to the Fifth Circuit Court of Appeals for consideration. Appeal bonds in the amount of $35,000.00 each were set for SIMS and MYERS.

JIM HUDSON, Attorney, has indicated to FLOYD M. BUFORD, U. S. Attorney, that the grounds for his appeal will be in connection with Judge BOOTLE's charge to the jury.

AT 157-788

On July 18, 1966, THOMAS RIDGEWAY, Solicitor General, Western Judicial Circuit, Athens, Georgia, advised that on July 18, 1966, SIMS entered a plea of guilty to the State charge of Assault with Intent to Murder. There is no indication at this time as to when SIMS will be sentenced on this charge.

The Civil Rights-Conspiracy case against subjects GUEST, LACKEY and PHILLIPS was called in U. S. District Court, July 2, 1966, on which date the selection of a jury began. Trial of these three defendants was concluded on July 8, 1966, and the case was given to the jury on that date. On July 8, 1966, the jury returned a verdict of not guilty as to all three defendants.

It is to be noted that during the Civil Rights trial, subject GUEST was in custody of the U. S. Marshal in that on June 7, 1966, in U. S. District Court, Athens, Georgia, he entered a plea of guilty to a criminal information charging him in four counts with violation of the Pure Food and Drug Act. On this plea of guilty, Judge BOOTLE on July 9, 1966, sentenced GUEST to the custody of the Attorney General for a period of six months on each of the four counts to run consecutively.

On July 18, 1966, FLOYD M. BUFORD, U. S. Attorney, Macon, Georgia, advised SA ROBERT MICHAEL KANE that he does not plan to re-indict GUEST on the National Firearms Act case. Mr. BUFORD stated that inasmuch as the weapon involved was merely one fourth of an inch under the legal length, and the fact that GUEST was prosecuted, found guilty, and sentenced to a period of two years under the Pure Food and Drug Act, and in addition was prosecuted under the Civil Rights law, he does not feel that further prosecution of GUEST is warranted.

FD-362 (Rev. 11-21-63)

PAROLE REPORT
FEDERAL BUREAU OF INVESTIGATION

Reporting Office	Office of Origin	Date
ATLANTA	ATLANTA	July 25, 1966

Name of Convict with Aliases:	Report Made By	Typed By
JOSEPH HOWARD SIMS	SA [redacted] b7c	/ld
	Violation: CIVIL RIGHTS - NATIONAL FIREARMS ACT	

Outline of Offense: SEE PAGE 2

Date and place of indictment; or information filed: October 16, 1964, at Athens, Georgia

Code and section under which charged: Section 241, Title 18, U. S. Code

Section under which sentenced: Section 241, Title 18, U. S. Code

Date and nature of plea: October 30, 1964 - not guilty

Date and place of conviction: July 9, 1966, Athens, Georgia

Date and duration of sentence: July 9, 1966 - ten years

Fines: None

Approved JKP LAW Special Agent in Charge

Do Not Write in Spaces Below

Copies Made:
(3) Bureau (44-25873)
Dissemination at SOG
2 - Bureau of Prisons
Date Fwd.: 7-28-66
By: JWH/b;d
1 -

44-25873-4-17

This document contains neither recommendations nor conclusions of the FBI. It is the property of the FBI and is loaned to your agency; it and its contents are not to be distributed outside your agency.

ENCLOSURE

FD-362

OUTLINE OF OFFENSE

Indictment charged that commencing on or about January 1, 1964, and continuing to October, 1964, JOSEPH HOWARD SIMS and co-defendants within the Middle District of Georgia conspired to injure, oppress, threaten and intimidate Negro citizens of the United States in the vicinity of Athens, Georgia, in the free exercise and enjoyment of certain rights and privileges secured to them by the Constitution and laws of the United States. These rights included the right to use of public accommodations, public facilities, public streets and highways, the right to travel free in interstate commerce and other rights exercised and enjoyed by white citizens in the vicinity of Athens, Georgia. It was charged that a part of the plan and purpose of the conspiracy that its objectives be achieved by various means including shooting, beating and killing Negroes, damaging and destroying property of Negroes, and general harassment of Negroes, all in violation of Section 241, Title 18, U. S. Code.

AGGRAVATING OR MITIGATING CIRCUMSTANCES:

Aggravating Circumstances

Proof was offered in the trial of this case to show that SIMS was a member of the Ku Klux Klan, Athens, Georgia, and that he and others charged in the indictment were members of an armed "security patrol" of the Klan. Proof was offered that SIMS and others participated in some six racial incidents in the Athens, Georgia, area involved in the shooting, beating and harassment of Negroes during the first six months of 1964. Proof was also offered that SIMS and a co-defendant, CECIL WILLIAM MYERS, and other Klansmen in October, 1965, were responsible for harassing and beating a Negro in the Crawfordville, Georgia, area.

An additional and obviously more serious incident was the shooting and killing of Lt. Col. LEMUEL A. PENN, a Negro, during the early morning hours of July 11, 1964, near Athens, Georgia.

Aggravating Circumstances (continued)

Col. PENN, a resident of Washington, D. C., and two companions were driving from Ft. Benning, Georgia, where they had been attending a Field Officers Refresher Course. They departed Ft. Benning about 12:15 a.m., July 11, 1964, and without incident had proceeded to a point in Madison County, Georgia, about 24 miles east of Athens, Georgia. Col. PENN was driving and his companions were dozing, one in the front seat with him and the other in the back seat. Without warning, a car pulled alongside the car driven by Col. PENN and two shotgun blasts were fired into his car, one of the shots killing Col. PENN instantly.

Proof was offered showing that SIMS and two of his co-defendants, CECIL WILLIAM MYERS and JAMES SPERGON LACKEY, had spotted the car which Col. PENN was driving when it passed through Athens, Georgia, that they observed a Washington, D. C., plate on the car and that they followed the car; further, that SIMS and MYERS actually fired the two shots almost simultaneously from sawed-off shotguns, one of which killed Col. PENN.

At the time SIMS was sentenced in U. S. District Court, Athens, Georgia, on July 9, 1966, the judge took notice of the fact that SIMS was actually a prisoner of the State of Georgia. Prior to and during the course of the trial in U. S. District Court, the judge specified that the ten-year sentence imposed by him on SIMS would begin on the disposition of the outstanding State charge.

The State charge referred to by the judge is a charge of Assault With Intent to Murder outstanding at Athens, Clarke County, Georgia, which arose out of SIMS shooting his wife on May 5, 1966.

On July 18, 1966, SIMS entered a plea of guilty to the State charge. There was no indication, however, as to

Aggravating Circumstances (continued)

when the court would pronounce sentence in the State charge.

Mitigating Circumstances

There are no known mitigating circumstances.

FD-336 (Rev. 11-21-63)

PAROLE REPORT
FEDERAL BUREAU OF INVESTIGATION

Reporting Office	Office of Origin	Date
ATLANTA	ATLANTA	July 25, 1966

Name of Convict with Aliases:	Report Made By	Typed By
CECIL WILLIAM MYERS	SA [redacted] b7c	/ld
	Violation: CIVIL RIGHTS - NATIONAL FIREARMS ACT	

Outline of Offense: SEE PAGE 2

Date and place of indictment or information filed: October 16, 1964, at Athens, Georgia

Code and section under which charged: Section 241, Title 18, U. S. Code

Section under which sentenced: Section 241, Title 18, U. S. Code

Date and nature of plea: October 30, 1964 - not guilty

Date and place of conviction: July 9, 1966, Athens, Georgia

Date and duration of sentence: July 9, 1966 - ten years

Fines: None

Aggravating or Mitigating Circumstances:

Approved JKP cw Special Agent in Charge

Do Not Write in Spaces Below

Copies Made:
(3) Bureau (44-25873)
Dissemination at SOG
2 - Bureau of Prisons
Date Fwd.: 7-28/66
By: DWH/bjb
1-

44-25873-477

This document contains neither recommendations nor conclusions of the FBI. It is the property of the FBI and is loaned to your agency; it and its contents are not to be distributed outside your agency.

ENCLOSURE

FD-362

OUTLINE OF OFFENSE

Indictment charged that commencing on or about January 1, 1964, and continuing to October, 1964, CECIL WILLIAM MYERS and co-defendants within the Middle District of Georgia conspired to injure, oppress, threaten and intimidate Negro citizens of the United States in the vicinity of Athens, Georgia, in the free exercise and enjoyment of certain rights and privileges secured to them by the Constitution and laws of the United States. These rights included the right to use of public accommodations, public facilities, public streets and highways, the right to travel freely in interstate commerce, and other rights exercised and enjoyed by white citizens in the vicinity of Athens, Georgia. It was charged that a part of the plan and purpose of the conspiracy that its objectives be achieved by various means including shooting, beating and killing Negroes, damaging and destroying property of Negroes, and general harassment of Negroes, all in violation of Section 241, Title 18, U. S. Code.

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Aggravating Circumstances (continued)

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Mitigating Circumstances

There are no known mitigating circumstances.

JA. 4-6461

[redacted]

b7c

July 20, 1966

Hon. J. Edgar Hoover, Director
Federal Bureau of Investigation
Washington, D. C.

Dear Mr. Hoover:

The enclosed newspaper clipping was published by the Atlanta Constitution, on July 11th, this year. As you will notice the article is hardly large enough to attract the average eye. However, a slaying in the same area, some time ago was in large bold type, front page headlines across the nation and is still making news.

You recently stated in an A B A article that there was "eighty three agents assigned to the case, working around the clock." This leaves one to wonder if there are any F.B. I. agents investigating this recent slaying or if the Civil Rights Bill is a one way street?

Thanking you for one minute indulgence, I remain

Respectfully yours,

[redacted]

JWH:lf
Enc.

b7c

498

ack 7-27-66
OFC/lf
1 ENCLOSURE

REC-24

JUL 22 1966

Mr. Ca
Mr. Cal
Mr. Cov
Mr. Felt
Mr. Gal
Mr. S
Mr. T
Mr. Tro
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REC.

Driver Slain In Athens Negro Area

ATHENS, Ga. (AP) — A white man was shot to death during a rock-throwing incident Saturday night after his truck broke down in a Negro section.

Assistant Police Chief Thomas McGahee identified the victim as 38-year-old Willie Junior Self of Athens.

He said Self was shot through the head after Negroes gathered around an old pickup truck that had stopped running in a Negro section of town. McGahee said Self and another white man were in the truck.

4/-23 -3 11

ENCLOSURE

REC-24 44-2[illegible]-498

July 27, 1966

[redacted]

b2c

Dear [redacted]

Your letter of July 20th, with enclosure, has been received.

As an attorney, you are aware that murder in and of itself is not a violation of a Federal Statute. The Federal Government does not investigate murder unless some element indicating a possible violation of a Federal Statute is present.

The FBI investigation in the shooting of Lieutenant Colonel Lemuel A. Penn was conducted under the Federal Civil Rights Conspiracy Statute, Title 18, Section 241, U. S. Code. The subjects in the Penn killing were indicted under this statute by a Federal Grand Jury in Athens, Georgia. In a decision rendered March 28, 1966, by the Supreme Court in the case entitled, "United States vs. Herbert Guest, et al.," (383 U. S. 745) the validity of the indictment in this case was upheld. The provisions and application of the Federal Statute are clearly spelled out in the Court's holding, and you may wish to review this decision to resolve any question you have in mind.

In the event you desire further information concerning the Federal Statute, you may desire to contact United States Attorney Floyd M. Buford, Macon, Georgia, who handled Federal prosecution of the case.

Sincerely yours,

J. Edgar Hoover

1 - Atlanta - Enclosures (2)

DFC:kcf (4)

See Note on Next Page

MAILED 3
JUL 28 1966
COMM-FBI

REC'D-READING ROOM
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AUG 4 1966

MAIL ROOM TELETYPE UNIT

[redacted] b7c

NOTE: Bufiles reflect that correspondent was one of a group of subjects in a National Bankruptcy Act; Perjury; Contempt of Court investigation from 1961 through 1965. In November, 1965, the Assistant United States Attorney, Atlanta, contacted the Department suggesting that prosecution not be pursued as he did not believe it would be successful.

0-20 (Rev. 1-28-66)

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UPI-71

ADD RACIAL, ATHENS (UPI-25A)

KLANSMAN JAMES S. LACKEY TESTIFIED IN HIS CIVIL RIGHTS TRIAL TODAY THAT A $3,000 OFFER FROM THE FBI PROMPTED HIM TO MAKE A STATEMENT THAT HE DROVE THE CAR FROM WHICH SHOTS WERE FIRED THAT KILLED NEGRO EDUCATOR LEMUEL PENN IN JULY 1964.

AN FBI AGENT DENIED THAT ANY SUCH OFFER WAS MADE TO LACKEY, ONE OF THREE KLANSMEN ON TRIAL ON CHARGES OF VIOLATING THE CIVIL RIGHTS OF NEGROES IN INCIDENTS LIKE THE PENN SLAYING.

THE TESTIMONY BY LACKEY AND FBI AGENT JACK SIMPSON WAS HEARD BY FEDERAL JUDGE WILLIAM A. BOOTLE WHILE THE JURY WAS OUT OF THE COURTROOM AS BOOTLE SOUGHT TO DETERMINE WHETHER THREE WRITTEN STATEMENTS ALLEGEDLY MADE BY LACKEY SHOULD BE ADMITTED IN EVIDENCE.

THE STATEMENTS COMPRISE THE CHIEF "NEW EVIDENCE" WHICH U.S. DISTRICT ATTORNEY FLOYD BUFORD WANTS TO INCLUDE IN THIS TRIAL THAT HE DID NOT USE IN LAST WEEK'S TRIAL OF THREE OTHER KLANSMEN ON SIMILAR CHARGES. THE VERDICT IN THAT CASE HAS BEEN SEALED IN ORDER NOT TO INFLUENCE THE ALL-MALE, ALL-WHITE JURY HEARING THE CURRENT CASE.

LACKEY WAS NOT ASKED ANY QUESTIONS ABOUT THE SUBSTANCE OF THE WRITTEN STATEMENTS OR WHETHER THEY WERE TRUTHFUL, BUT ONLY ABOUT THE CIRCUMSTANCES UNDER WHICH THE STATEMENTS WERE MADE.

7/7 H1235PED

I want Sports on this

XEROX
AUG 11 1966

REC-59 44-25823-4113

16 AUG 31 1966

WASHINGTON CAPITAL NEWS SERVICE

0-20 (Rev. 1-25-66)

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UPI-93
ADD RACIAL, ATHENS
BOOTLE LATER RULED THAT THE WRITTEN STATEMENT BY LACKEY COULD BE ADMITTED IN EVIDENCE IN THE TRIAL.
7/7--CE144P

3 Aug

0-16 (Rev. 5-4-66)

Penn Case Figure Said He Drove, Agent Relates

ATHENS, Ga., July 16 (UPI) An FBI agent testified today in the civil rights conspiracy trial of three Ku Klux Klansmen that one of the defendants confessed to him that he drove the car from which nightriders killed Negro educator Lemuel Penn.

The testimony was given by special agent Clarence A. Brom, out of the presence of the jury.

Brom testified in the trial of ~~Deputy~~ Willis Phillips, 26, Herbert Guest, 29, and James S. Lackey, 30, Ku Klux Klansmen charged with conspiring to deprive Negroes — and especially Penn — of their civil rights.

The FBI agent told the court that after the killing in 1964, Lackey said during an interrogation session that "I'm going to tell you the truth. I drove the car, but I didn't think those S.O.B.s would kill him."

Brom also testified that Lackey identified pictures of a sawedoff shotgun which he said Lackey told him was the death weapon.

The statements allegedly made by Lackey have not yet been admitted as evidence. Judge William A. Bootle was to decide that Thursday.

The FBI agent admitted that another special agent, Jack Simpson, told Lackey when he was being questioned "that the Government sometimes paid as high as $3000 for confirmation" in cases of importance.

Earlier today, a bushy-haired former Klansman testified that another defendant admitted taking part in the shooting up of a Negro apartment.

Tom Stevens testified that Phillips "told me he had my tag on his car when they shot into a Negro apartment."

The apartment shooting, in which two Negroes were wounded, took place in March, 1964, four months before Penn, a Washington educator, was slain.

Stevens said that on the night in question, he left his car at Guest's garage, and when "I came back to get it, the license plate was gone." Phillips, he said, told him that he and other Klansmen had used the plates on another car in the raid on the apartment.

U.S. Attorney Floyd Buford, prosecuting under an 1870 law, was presenting his case swiftly. Eleven Government witnesses testified yesterday and eight more took the stand today.

Associated Press

RECESS—James S. Lackey, left, his wife and their daughter, 7, leave the Federal Building in Athens, Ga., for the noon break in Lackey's trial. Lackey, Herbert Guest, standing on the steps in the rear, and a third suspect are being tried on charges growing out of the death of Lemuel A. Penn. The man in overalls behind Lackey is the defendant's father, L. D. Lackey.

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The Washington Post and Times Herald
The Washington Daily News
The Washington Evening Star
New York Daily News
New York Herald Tribune
New York Post
The New York Times
New York World Journal
New York World Journal Tribune
The Baltimore Sun
The Worker
The New Leader
The Wall Street Journal
The National Observer
People's World

Date 16 AUG 8 1966

JUL 7 1966

UNITED STATES GOVERNMENT

Memorandum

TO : DIRECTOR, FBI DATE: 7/12/66

FROM : SAC, ATLANTA (67-50)

SUBJECT: PENVIC

Recommendations for Commendation

Enclosed for the Bureau are two copies each of Form FD 255 recommending Incentive Awards for SA ROBERT MICHAEL KANE and SA JAMES B. HENDERSON.

On 7/8/66, CECIL WILLIAM MYERS and JOSEPH HOWARD SIMS were convicted in United States District Court, Athens, Ga., for violation of Title 18, Section 241, U. S. Code. On 7/9/66, MYERS and SIMS were each sentenced to the maximum prison sentence under the law of ten years. This conviction and sentence culminated two years of work by the FBI, which began on 7/11/64, when Lt. Col. LEMUEL W. PENN was shot and killed on a rural road in Northeast Georgia.

As a result of this murder, an intensive investigation was conducted by the FBI under the direction of Assistant Director, JOSEPH CASPER. As a result of a confession received from JAMES LACKEY, MYERS and SIMS were identified as the murderers. They were tried in State Court in September of 1964, and were acquitted. In October, 1964, they were indicted by a Federal Grand Jury, and the indictment was later dismissed by Federal Judge BOOTLE inasmuch as he felt that this case was not within Federal jurisdiction. This decision was appealed. In early 1966, the United States Supreme Court overruled Judge BOOTLE's opinion.

As a result of the Supreme Court decision, on 5/3/66, at the request of the Department of Justice, the Atlanta Office began an intensive investigation in order to bring this case to trial. Departmental Attorneys were

9 - Bureau (Encs. 4)
1 - San Francisco (SA CLARENCE A. BROM)
(Personal Attn RECORDED)
8 - Atlanta

JKP:mel
(18)

EX-103 64-[illegible]-501

51 AUG 12 1966

RECORDED 167 AUG 5 1966

in Athens, Ga. during this time and made daily requests of the Bureau for investigation. These requests were handled in each instance in an expeditious manner. The Atlanta Division received many oral commendations from USA FLOYD M. BUFORD and the Departmental Attorneys for the expeditious handling of their requests, and for the outstanding investigation conducted by Atlanta Agents. On 7/9/66, USA BUFORD received a telephone call from the President of the United States commending him and the FBI for the outstanding work which resulted in the conviction of MYERS and SIMS. Mr. BUFORD also received similar commendations from the Attorney General, and he advised the Atlanta Office that it was the outstanding work of the FBI which made successful prosecution possible.

The enclosed FD 255s constitute my recommendations for incentive awards for Special Agents ROBERT MICHAEL KANE and JAMES B. HENDERSON, who were the two employees in the Atlanta Division whose contributions were most noteworthy in the handling of this case. I also wish to make the following additional recommendations in connection with this matter:

SA JACK B. SIMPSON

SA SIMPSON was instrumental in conducting, along with another Agent, the interview of THOMAS FRANKLIN STEPHENS. STEPHENS' testimony implicated MYERS and SIMS in this murder, and was the most single effective matter of evidence introduced at the trial. SA SIMPSON also testified at the second trial concerning his obtaining of a statement from JAMES LACKEY in 1964, implicating MYERS and SIMS in this murder. SA SIMPSON's interview of STEPHENS was highly effective and his testimony in court was excellent. He is recommended for a letter of commendation.

AT 67-50

SA [redacted]

SA [redacted] along with SA JACK B. SIMPSON, interviewed THOMAS FRANKLIN STEPHENS and obtained a statement from him, which implicated MYERS and SIMS in the murder of Lt. Col. PENN. SA [redacted] had interviewed STEPHENS formerly in other matters, and had gained the confidence of STEPHENS. SA [redacted] was responsible for keeping STEPHENS in a cooperative mood before the trial, and was also responsible for making STEPHENS available for interviews with Departmental Attorneys and the USA prior to the trial. SA [redacted] also through telephonic contact with STEPHENS, who was in the state of Illinois, persuaded him to return to Georgia to participate in this interview with the attorneys. This required extreme tact and diplomacy inasmuch as STEPHENS was fearful for his safety, and reluctant to testify. A letter of commendation to SA [redacted] is recommended.

b2c

SA CLARENCE A. BROM
SAN FRANCISCO DIVISION

SA CLARENCE A. BROM testified in the second trial for several hours concerning the interview and obtaining of a signed confession from JAMES LACKEY in 1964, which confession implicated MYERS and SIMS in this murder. SA BROM was put under grueling cross examination during the trial as a result of the attempt by the defense attorneys to prevent the admission of LACKEY's statement as evidence in the trial. The Judge admitted the statement into evidence and the USA feels that the excellent testimony of SA BROM was the contributing factor to the admission of the statement. A letter of commendation to SA BROM is recommended.

SA [redacted]

SA [redacted] is assigned to the Athens Resident Agency, and handled in an expeditious manner much of the investigation requested by the Departmental Attorneys. He also handled his other investigative responsibilities, and went far beyond the call of duty during this time. He is a first office Agent, and the outstanding investigation conducted by him made a very significant contribution to the successful prosecution of this case. A letter of commendation is recommended. b7c

SA [redacted]

SA [redacted] is the Supervisor of the #3 Squad in the Atlanta Division, and supervises Civil Rights cases and Racial Matters. He was responsible for the supervision of this investigation under the overall supervision of the SAC. SA [redacted] assigned manpower, supervised closely the work of Special Agents KANE and HENDERSON, who carried on the major portion of this investigation, and approved the reports and other communications in this matter. The effective supervision of SA [redacted] was also a contributing factor to the overall successful investigation and prosecution of this case. A letter of commendation is recommended. b7c

In addition to the foregoing recommendations, I also recommend that a general letter of commendation be directed to the Atlanta Office in order that copies of this letter can be placed in the personnel files of the other many deserving employees who worked on this case, but whose performance did not necessarily entitle them to a recommendation for individual commendation.

UNITED STATES GOVERNMENT

Memorandum

TO : DIRECTOR, FBI

DATE: 7/22/66

FROM: SAC, ATLANTA (80-894) (P)

SUBJECT: APPEALS IN BUREAU CASES
ATLANTA DIVISION

RE: HERBERT GUEST; ETAL;
LT. COL. LEMUEL A. PENN, Deceased,
USAR SA 0348661; ETAL - VICTIMS
CIVIL RIGHTS - NATIONAL FIREARMS ACT
(OO: Atlanta)
Bufile 44-25873
ATfile 157-788

Subjects JOSEPH HOWARD SIMS and CECIL WILLIAM MYERS tried in USDC, Athens, Ga., on indictment charging violation Sec. 241, T. 18, USC. On 7/1/66 jury returned verdict of guilty, and on 7/9/66 SIMS and MYERS were sentenced to the custody of the Attorney General for a period of ten years each. On 7/9/66 the attorney for SIMS and MYERS filed a notice of appeal and appeal bond set at $3,500.00 for each subject. Basis for appeal not known at this time; however, JIM HUDSON, attorney for subjects, has indicated grounds for his appeal will be in connection with judge's charge to the jury.

The appeal in this case will be followed and Bureau advised of developments under the substantive case caption.

2 - Bureau
2 - Atlanta (1 - 80-894)
(1 - 157-788)

JBH/cjm
(4)

44-25873-511

REC-23

JUL 26 1966

FBI
REC'D - CI/ [illegible]

50 JUL 1966

FD-36 (Rev. 5-22-64)

FBI

Date: 8/16/66

Transmit the following in _____ (Type in plaintext or code)

Via AIRTEL AIRMAIL (Priority)

TO: DIRECTOR, FBI (44-25873)

FROM: SAC, ATLANTA (157-788)(P)

SUBJECT: PENVIC

b7c

Rerep of SA [redacted] at Atlanta, Georgia, 7/25/66.

On 7/18/66, JOSEPH HOWARD SIMS was arraigned in Superior Court, Western Judicial District, Clarke County, Athens, Georgia, and entered a plea of guilty to a charge of assault with intent to murder.

On 8/13/66, Judge JAMES BARROW, Superior Court, sentenced SIMS to a period of ten years on this charge. This is the maximum sentence under the charge. It is not presently known at which state institution he will serve this sentence.

On 8/11/66, CECIL WILLIAM MYERS was received at the USP, Atlanta, Georgia, #89824A, where he will serve the sentence received by him in the Civil Rights case.

3 - Bureau
4 - Atlanta (2 - 157-788)
(1 - [redacted] (MYERS)
(1 - [redacted] (SIMS)

b7c

JBH:eeb
(7)

REC-59 157-788-502

EX-104

18 AUG 19 1966

(M.C. Black)

54 AUG 30 1966

Approved: _____ Sent _____ M Per _____
Special Agent in Charge

UNITED STATES GOVERNMENT

Memorandum

TO : DIRECTOR, FBI (44-25873) DATE: 11/9/66

FROM : SAC, ATLANTA (157-788)(P)

SUBJECT: PENVIC

Re report of SA [redacted] at Atlanta dated 7/25/66.

Forwarded herewith is one copy of a brief filed by the attorneys for defendants CECIL WILLIAM MYERS and JOSEPH HOWARD SIMS, appealing their case from the USDC to the U.S. Circuit Court of Appeals for the Fifth Circuit. The brief is captioned "CECIL WILLIAM MYERS and JOSEPH HOWARD SIMS, Appellants, vs United States of America, Appellee."

The Bureau will note that appellants contend there are three points of law involved, all of which are based upon the admissibility or lack of admissibility of testimony of witnesses TOM STEVENS, OMER TURNER, and GEORGE TURNER.

FLOYD M. BUFORD, USA, Macon, Georgia, has advised that ST. JOHN BARRETT, Departmental Attorney, is preparing the group briefs in this matter.

LEADS:

NEW ORLEANS

AT NEW ORLEANS, LOUISIANA.

Will follow and advise Bureau and Atlanta of results of appeals.

ENCLOSURE

2 - Bureau (Enc. 1)
2 - Atlanta
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1CC - CA Clinis
Routine to Osborn Mem
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JWH/ajk

ENCLOSURE ATTACHED

REC-50 157-788-105

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Buy U.S. Savings Bonds Regularly on the Payroll Savings Plan

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UNITED STATES ATTORNEY
MACON, GEORGIA

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IN THE UNITED STATES CIRCUIT COURT OF APPEALS

FOR THE FIFTH CIRCUIT

CECIL WILLIAM MYERS, and JOSEPH HOWARD SIMS, Appellants	*	NUMBER 23847
VS	*	APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT
UNITED STATES OF AMERICA, Appellee	*	OF GEORGIA

BRIEF FOR APPELLANTS

Appellants were the defendants in the case in the trial Court and will be referred to hereinafter as defendants.

These defendants, along with certain others, were indicted for a conspiracy in violation of Section 241, Title 18, United States Code, it being alleged that the conspiracy was for the purpose to injure, oppress, threaten, and intimidate Negro citizens of the United States in the vicinity of Athens, Georgia, in the free exercise and enjoyment by said Negro citizens of a right and privilege secured to them by the Constitution and laws of the United States. The right and privilege alleged to have been conspired against was the right to travel freely to and from the State of Georgia and to use highway facilities and other instumentalities of interstate commerce within the State of Georgia.

The indictment then alleged the various ways the conspirators intended to carry out the purposes of the conspiracy. (T-2 & 3).

The evidence tended to show that these defendants had been members of the Ku Klux Klan; that they participated in a counter-picketing of the Varsity Drive Inn Restaurant, Athens, Georgia, which was being picketed by members of the Negro race, that one of these defendants participated in the beating of a Colored man of Clarke County, Georgia, in Clarke County, Georgia; that these two defendants might have participated in an incident in Clarke County, Georgia, where a colored apartment housing was shot into; that one of the defendants when the other one was present, told a Negro couple in Clarke County, Georgia, who were driving a New Jersey car to go back to New Jersey; that one of these defendants was present when a colored man in Clarke County, Georgia, was chased by a car and claimed someone had a shotgun or a rifle pointed at him; that these two defendants spoke to a policeman concerning their suspicions that a Clarke County Negro man, Frank Gilmore, might have been a prowler; that these two defendants were involved in an assault on a Negro man in Taliaferro County, Georgia, more than a year after the return of the indictment;

that at Crawfordville, Georgia, these defendants were with other people and they had with them a large arsenal of weapons; and there was evidence to the effect that these defendants might have had something to do with the murder of Colonel Lemuel Penn in Madison County, Georgia, on July 11, 1964, when Colonel Penn, a resident of Washington, D. C., was passing through Georgia, going to his home in Washington, D. C.

Upon the trial of the case these two defendants were found guilty and the other four defendants were found not guilty. These two defendants then appealed the case directly to this Court.

There are three questions of law involved as follows:

1. Did the Court err in admitting the statement made by an alleged co-conspirator to a third person when these defendants were not present? The manner in which this question was raised was by an objection to the statement at the time it was testified to.

2. Did the Court err in refusing to allow counsel for these defendants to ask a witness for the Government a question which the defendants contended would have resulted in said witness having been impeached? The manner

in which this question was raised was through counsel for defendants' asking the Court if he could ask the question and he was overruled.

3. Did the Court err in admitting evidence of an incident which occurred at Crawfordville, Georgia, more than one year after the return of the indictment? The manner in which this question was raised was by objection to the evidence at the time it was offered.

SPECIFICATION OF ERRORS

There are three errors in this case and are specifically set out as follows:

1. The Court erred in letting a Government witness, Tom Stevens, testify that one of the alleged co-conspirators, Herbert Guest, told him on the night that Lemuel Penn was murdered, that these defendants with another co-conspirator, had left out of his place, "chasing a Negro car with a D. C. tag on it," and that they had Herbert Guest's gun. Herbert Guest was not tried with these defendants. Counsel for defendants urged a standing objection which had been made earlier in the trial and also objected to the evidence on the ground that such a statement would have to be a statement

that was made in "furtherance" of the conspiracy. It was error for the Court to overrule this objection because the statement was not a statement made in the "furtherance" of the conspiracy.

2. The Court erred in not allowing counsel for defendants to ask a Government witness, Tom Stevens, whether or not he ever pleaded guilty to dispensing amphetamine sulphate tablets without a prescription in violation of the Pure Food Drug and Cosmetic Act and if he was still serving a probationary sentence under that plea. The Court refused to allow this question. Defendants had the right to impeach the Government's witness. The violation of that particular Act is a felony and defendants had the right to impeach the Government's witness by showing that he had pled guilty to a crime which was a felony. It was error for the Court to refuse the defendants their right to impeach this witness.

3. The Court allowed Government witnesses, Omer Turner, George Turner, and Sheriff Milton Moore to testify concerning acts which occurred in Taliaferro County, Georgia, near Crawfordville, Georgia, more than one year after the indictment was returned. The acts concerned an assault on the two Turners, and the collection by the Sheriff from the defendants and others, an arsenal of

weapons. It was error to admit this evidence because said evidence was immaterial, irrelevant, and highly prejudicial to these defendants. It also allowed these defendants to be convicted of something for which they were not charged with in the indictment. The admission of this evidence was error.

ARGUMENT AND CITATION OF AUTHORITIES

Defendants will argue and cite authorities for the specified errors in the same order that the errors are specified.

The Court erred in admitting in evidence the statement of an alleged co-conspirator made to a third present person out of the presence of these defendants.

Tom Stevens was called as a Government witness. (T-551). He testified that he went to Herbert Guest's garage before daybreak on July 11, 1964. (T-557). Colonel Lemuel Penn was killed on July 11, 1964, near Athens, Georgia, in Madison County, Georgia. (T-425, T-435, T-436, and T-437).

Counsel for defendants objected to the Government going into what Herbert Guest said on the ground that any such statement to be admissible, must be the type statement

that is in furtherance of a conspiracy. (T-558 near the bottom of the page.)

The Court allowed the witness to testify as follows beginning at T-551 going through T-562 and on T-563:

Q. Well, let me ask you this question. Did Mr. Guest mention to you the name James Lackey or Howard Sims or Cecil Myers? Were their names mentioned this morning of July 11 when you were down there in connection with the boat?

A. Yes sir.

Q. What did he say about those three men?

A. He said they left there - er - they were chasing a Negro car with a D. C. tag on it.

Q. Said they left there?

A. Yes sir.

Q. Doing what?

A. Chasing a car with a D. C. tag on it.

Q. Was anything said about a gun?

A. No sir, they wasn't anything said about a gun then.

Q. Well, was something said about the gun later?

A. He said they had his gun.

Q. Said who had his gun?

A. Them boys.

Q. Name the boys you are talking about.

A. Howard and -

Q. Howard Sims?

A. Yes sir.

Q. And who else?

A. And James Lackey.

Q. James Lackey?

A. Yes sir. And Myers.

Q. Cecil Myers?

A. Yes sir.

Q. Said they had his gun?

A. Yes.

Q. Now, what was it about - I didn't quite follow you on it - what was it about chasing a Negro?

A. I didn't understand that part.

Colloquy of counsel left out.

Q. What was said about chasing a Negro?

A. Said they left there chasing some, were going to follow some, and that he would have went with them but wasn't nobody there but him.

Q. Was anything said about where the Negroes were from?

A. Said it was a D. C. tag, Washington, D. C. tag.

On the face of it, this evidence was hearsay and was immaterial, irrelevant, and very highly prejudicial to these defendants.

Of course, counsel recognizes the long-established rule that declarations of co-conspirators made in furtherance of the conspiracy and during its pendency are admissible against the other co-conspirators. This rule is unquestioned. It is also unquestioned by counsel for defendants that the trial Judge had the burden of determining if a prima facie case of conspiracy had been made before he let this evidence go to a jury and once he had made this determination, it was a question for the jury to decide as to whether or not a conspiracy existed before they took the evidence offered into consideration. However, the point in this case is that the statement was not made in the furtherance of the conspiracy.

In order for the statement by Herbert Guest to have been admissible, it must have been made in the furtherance of the alleged conspiracy. "Only those declarations of alleged co-conspirators which are made in the furtherance (emphasis supplied) of conspiracy are admissible against

other alleged conspirators, etc. 218 F. 2nd 275, Lott et al vs. United States, Headnote 10, at page 676. "It is familiar learning that any statement made by conspirators in furtherance (emphasis added) of the conspiracy and during its pendency is admissible against each co-conspirator, etc." The Court also cites the cases of Clune vs. United States, 159 U. S. 590, 593; Logan vs. United States, 144 U. S. 263. "This Court has long held that a declaration made by one conspirator, in furtherance (emphasis ours) of a conspiracy and prior to termination may be used against the other conspirator." 352 U. S. 232, Paoli vs. United States, at page 237. It is further stated in the case of Krulewitch vs. United States, 336 U. S. 440 at page 443, "There are many logical and practical reasons that could be advanced against a special evidentiary rule that permits out-of-Court statements of one conspirator to be used against another. But, however cogent these reasons, it is firmly established that where made in furtherance (emphasis ours) of the objectives of a going conspiracy, such statements are admissible as exceptions to the hearsay rule. This prerequisite to admissibility, that hearsay statements made by some conspirators to be admissible against others must be made in furtherance (emphasis

ours), of the conspiracy charge has been scrupulously observed by the Federal Courts."

There is no question at all that a statement made by a co-conspirator in the furtherance of a conspiracy is admissible against other co-conspirators. However, defendants hasten to call the Court's attention to the fact that such a statement must be made in "furtherance" of the conspiracy.

What does the word "furtherance" mean? It is stated in Powers vs. The Commonwealth, 144 Kentucky 237, "The word "furtherance" as applied to the act of one accomplice in the furtherance of a criminal project has a well-defined and generally accepted meaning. It is the act of furthering, or helping forward, or promotion, or advancement. It is stated in the case of People vs. Smith, 151 California, 619, "The word "furtherance" within the rule that no declarations except those made during the pendency of a conspiracy and in 'furtherance' of its objects, can be used against a co-conspirator, means an act, statement, or declaration which in some measure aids or assists toward the consummation of the object of the conspiracy." It is stated in the case of People vs. Trilck, 374 Michigan 118, "The word 'furtherance'

as used in relation to admissibility of acts and declarations of conspirators done or made in furtherance of the object of the conspiracy is not a technical word, obscure in meaning, but it means fact of preferment: advancement, promotion.

Websters New International Dictionary, Second Edition Unabridged, states that the word "furtherance" means the act of furthering, helping forward, promotion, advancement, progress.

The statement by Herbert Guest to a third party out of the presence of the defendants does not meet the "furtherance" test. The statement by Herbert Guest did not in any way further, help forward, promote, advance, aid, assist, help consummate or progress the alleged conspiracy in any way whatsoever. The statement by Herbert Guest was in essence that the defendants and another defendant had followed Colonel Lemuel Penn's car and had Herbert Guest's shotgun with them. The statement in no way furthered the alleged conspiracy.

It was clearly error for the Court to admit this statement as it was hearsay.

This hearsay evidence was without doubt highly prejudicial to these defendants especially since the

Government went into great detail concerning the murder of Colonel Lemuel Penn on July 11, 1964, the testimony by the Government witnesses taking 218 pages of transcript, beginning at T-423 until T-592, and rebuttal from T-669 until T-718.

The Court made a highly harmful error in admitting this evidence.

The next harmful error was the Court's refusal to allow counsel for defendants to ask the Government's witness, Tom Stevens, a question which would have impeached him.

"There is no question but there exists a general rule that evidence of Appellant's previous misconduct or other criminal acts is inadmissible. * * * One well-recognized exception is that proof of a prior conviction of a felony is admissible to impeach a witness's credibility. 267 F. 2nd 483, Bush vs. United States, Headnote 8 at page 489. The Court also cites the case of Meeks vs. United States, 163 F. 2nd, 598. "Witness's prior conviction of a felony can be shown to impeach his credibility." 249 F. 2nd, Roberson vs. United States, Headnote 9.

737

"Rule 26, Federal Rules of Criminal Procedure, in pertinent part, provides, 'The admissibility of evidence and the competency and privileges of witnesses shall be governed, except when an act of Congress or these rules otherwise provide, by the principles of the Common Law as they may be interpreter by the Courts of the United States in the light of reason and experience.'" At Common Law the inquiry was limited to felony or crimes involving moral turpitude. The rule ordinarily to be followed in this Circuit has been stated as follows: "In criminal cases, a witness may be asked for purposes of impeachment, whether he has been convicted of a felony, infamous crime, petit larceny or a crime involving moral turpitude." Pennix vs. United States, 313 F. 2nd 524, Headnote 8 at page 530.

"It is competent for the purpose of discrediting a witness to show that he has been convicted of a crime of the dignity of a felony or petit larceny." 192 F. 2nd 681, Pearson et al vs. United States, Headnote 22.

Defendants contend that the crime which the witness, Tom Stevens, had pled guilty to, which is tantamount to a conviction, was a felony. Defendants will cite authority for this proposition. Defendants also contend that the crime of dispensing amphetamine sulphate is a crime

involving moral turpitude. Defendants will cite no authority for this proposition as they can find none but will argue that it is a crime involving moral turpitude.

During the course of the trial, in an attempt to be fair to the Government, defendants' counsel asked permission of the Court to approach the bench in the presence of the District Attorney and it was stipulated that defendants' counsel wanted to propound the following question to the Government's witness, "Mr. Stevens, have you ever been convicted of a Federal offense in which you received a probationary sentence?" The District Attorney objected. It was stipulated that the question referred specifically to the incident where the witness, Tom Stevens, pleaded guilty to dispensing amphetamine sulphate tablets without a prescription in violation of the Pure Food and Drug and Cosmetic Act. It was further stipulated that defendants wanted to ask the witness if he were still serving, at the time of the trial, the probationary sentence from that offense. (T-597). The Court refused to allow the questions. (Top of T-598).

Defendants contend that the crime of dispensing amphetamine sulphate in violation of the Federal law is

a felony. Dispensing of amphetamine sulphate is covered in 21 U. S. C. 353 (b) 1 (B), which is prohibited by 21 U. S. C. A. 331, and punishable under 21 U. S. C. A. 333. Subsection (a) of 21 U. S. C. A. 333 provides, "Any person who violates any of Section 331 of this Title shall be guilty of a misdemeanor and shall on conviction thereof be subject to imprisonment for not more than one year, or a fine of not more than $1000.00, or both such imprisonment and fine; but if the violation is committed after a conviction of such person under this Section has become final, such person shall be subject to imprisonment for not more than 3 years, or a fine of not more than $10,000.00, or both such imprisonment and fine."

Defendants contend that a violation of this Statute is a felony and for authority cites 194 F. 2nd 686, Cardiff vs. United States. Headnote 1 of the cited case provides, "Provisions of the Food and Drug Act making the first offense for violation of a certain Section a misdemeanor and the second offense a felony, create a felony (emphasis ours)." This case refers to 21 U. S. C. A. 333. It was held that a violation of the Act was a felony. The case was appealed directly to the United States Supreme Court

(6)

as is set out in 344 U. S. 174 where the decision in favor of the defendant was upheld on other grounds. The United States Supreme Court did not decide on the question of whether or not the violation was a felony. However, the case is authority for the proposition that a violation of the Pure Food and Drug and Cosmetic Act is a felony.

Defendants contend that the violation was a felony and they should have been allowed to impeach the witness by asking the question denied them.

Without precedent, defendants contend that they should be allowed to impeach a man who has pled guilty to a crime involving moral turpitude and that the crime of dispensing amphetamine sulphate is a crime involving moral turpitude. Many Circuits allow impeachment because of a crime involving moral turpitude. Defendants have not found a case in this Circuit which allows such impeachment on such grounds but contend that it should be the rule in this Circuit. Defendants further contend that the dispensing of amphetamine sulphate in violation of the Federal law, greatly endangers and degrades human persons, and, therefore, it is a crime involving moral turpitude.

This was a harmful error.

The third harmful error committed was in allowing evidence concerning certain transactions which took place on the third Sunday in October of 1965, in Crawfordville, Georgia, which is not in the vicinity of Athens, Georgia, and which occurred more than one year after the return of the indictment.

This testimony involved an assault on two Negro citizens of Taliaferro County, Georgia, near Crawfordville, Georgia, and the capturing by the Sheriff of Taliaferro County of an arsenal of weapons in the possession of these defendants and others.

The testimony concerning these transactions begins at T-356 and the objection is set out at T-357. After the objection the testimony begins at T-362 and ends at T-422.

This evidence was immaterial, irrelevant, and highly prejudicial to these defendants and it was error to admit it.

There is ample authority for the proposition that evidence as to transactions subsequent to the return of the indictment can be admitted for a limited purpose, that is to determine the motive and intent of the defendants as to matters charged in the indictment, if the circumstances show a sufficient connection from which inferences may reasonably be drawn. One particular case is found in

316 F. 2nd 617 Roe and Stratoray Oil, Inc., vs. United States. However, all of the cases which defendants have found involve a case where an overt act is required.

However, in the case at bar which is an indictment for a conspiracy in violation of 18 U. S. C. A. 241, an overt act is not necessary. Intent is the necessary ingredient. Smith vs. United States 157 F. 2nd 721, Certiorari 208 U. S. 618, and The United States vs. Ellis, 43 F. Supp. 321. In other words intent and motive in the case at bar is the necessary ingredient to the commission of the crime.

In all fairness, when admitting this evidence, the Court before admitting it instructed the jury that it was admitted for the limited purpose of determining the motive and intent of the defendants who participated in the subsequent transactions with respect to their intent and motive as to the matters charged in the indictment.

However, under the facts of this case, that is to say intent and motive being the main ingredients and no overt act being required, this limitation was no limitation at all. Suppose, the jury had not been convinced beyond a reasonable doubt by all of the other evidence admitted, that these defendants were guilty of a conspiracy under

18 U. S. C. A. 241. Then, under the Court's instruction, even as to a limited purpose of motive and intent, the jurors could still have been convinced beyond a reasonable doubt because of this evidence, that the defendants did have the motive and intent in violation of 18 U. S. C. A. 241. Under those circumstances these defendants might possibly have been convicted solely on evidence of transactions which occurred after the indictment was returned. The evidence would thus have been immaterial, irrelevant, and highly prejudicial to these defendants.

The indictment charges that the defendants, "did * * * conspire * * * in the vicinity of Athens, Georgia, continuing until the date of the indictment (October, 1964)" to violate the rights of Negro citizens to travel freely in interstate commerce and to use instrumentalities of interstate commerce within the State of Georgia.

The net result of this admission was to highly prejudice these defendants with immaterial and irrelevant matter.

Another result of this admission was to deprive these defendants of their right under the Fifth Amendment of the United States Constitution which requires that prosecution be begun by an indictment. To deprive them

of this right would no doubt be highly prejudicial to thase defendants.

As persuasive authority, we cite 361 U. S. 212, Nicholas A. Starone vs. United States where in an unanimous decision the Supreme Court hald that the trial Court erred in allowing admission of a similiar type transaction and charging the jury as to their right to convict on the similiar type transaction. It was error for the reason that the defendant had a right to have his prosecution begun by an indictment, and since the indictment did not mention the other transaction, evidence as to the same should not have been admitted and the Court should not have charged on the same.

Counsel for the defendants recognizes the difference in the cases, but the net result of the admission of the evidence in the case at bar and the charge by the Court (i.e., limiting the evidence to the question of motive and intent) is the same. This is true for the reason that the motive and intent of the defendants is the gravamen of the offense in a violation of 18 U. S. C. A. 241.

We realize that the following statement is redundant but this is a serious case. The result of the Court's admission of this evidence of transactions which

occurred subsequent to the indictment, with the Court's instruction in an attempt to limit the admission of the evidence for the sole purpose of demonstrating intent and motive, was to allow the jurors to convict the defendants because of a transaction which occurred subsequently to the return of the indictment, and the same was highly prejudicial, immaterial and irrelevant. It also violated their rights under the Fifth Amendment of the Constitution of the United States and although that specific question was not raised at the trial due to the ineptitude of counsel for the defendants in dealing with complex questions of law, it was, nevertheless, very highly prejudicial, immaterial and irrelevant.

Defendants respectfully request that the case be reversed and remanded for a new trial.

HUDSON AND STULA

BY:_____
Attorneys for Defendants

Post Office Address:

313 Southern Mutual Building
Athens, Georgia

OPTIONAL FORM NO. 10
MAY 1962 EDITION
GSA GEN. REG. NO. 27
5010-106

UNITED STATES GOVERNMENT

Memorandum

TO : Mr. DeLoach

DATE: November 18, 1966

FROM : A. Rosen

1 - Mr. DeLoach
1 - Mr. Rosen
1 - Mr. Malley
1 - Mr. McGowan
1 - Mr. Hines
1 - Mr. Wick

SUBJECT: HERBERT GUEST, ET AL.;
LT. COL. LEMUEL A. PENN, DECEASED,
USAR SN 0340661; ET AL. - VICTIMS
CIVIL RIGHTS - NATIONAL FIREARMS ACT

The Atlanta Office, by letter November 9, 1966, furnished to the Bureau a copy of a brief filed by the attorneys for the defendants Cecil William Myers and Joseph Howard Sims, appealing their conviction from the U. S. District Court, Middle District of Georgia, to the U. S. Fifth Circuit Court of Appeals. Sims and Myers were both convicted in the U. S. District Court on July 1, 1966, on an indictment charging violation of the Federal Civil Rights Conspiracy Statute (Title 18, Section 241, USC) in connection with the shooting of Lieutenant Colonel Lemuel A. Penn near Athens, Georgia, on July 11, 1964.

The appeal brief does not mention the FBI. It bases the appeal on three questions of law:

1. The Court erred in letting Government witness Tom Stevens testify that one of the alleged "conspirators" in the indictment told him on the night that Lemuel Penn was murdered that the defendants had left his place "chasing a Negro car with a D. C. tag on it." The brief holds that the Court was in error in overruling the defense's objection to this statement because it was not made in "furtherance" of the conspiracy.

2. The Court erred in not allowing defense counsel to question Government witness Tom Stevens whether or not he had previously pleaded guilty to a violation of the Pure Food, Drug, and Cosmetic Act and received a probationary sentence. The brief holds that the Court erred in refusing the defendants their right to impeach Stevens.

JWH:sjk
(7)

EX-117

4 NOV 25 1966

CONTINUED - OVER

65 NOV 30 1966

3. The Court erred in allowing Government witnesses to testify to acts of the defendants relating to their assault on two of the witnesses which occurred more than a year after the Federal conspiracy indictment was returned against them. The brief holds that this was error because the evidence was immaterial, irrelevant, and highly prejudicial to the defendants and allowed the defendants to be convicted of something for which they were not charged in the indictment.

U. S. Attorney Floyd M. Buford, Macon, Georgia, has advised that Department Attorney St. John Barrett is preparing the Government's brief in answer to the brief of the defendants.

ACTION:

For information. This appeal is being closely followed and you will be kept advised.

4-312 (Rev. 1-18-62)

Date of Mail 12-5-66

-Has been removed and placed in the Special File Room of Records Branch.

See File 66-2554-7530 for authority.

Subject JUNE MAIL Ponvic

Removed By

File Number 44-25873-505

Permanent Serial Charge Out

12/8/66

1 - Mr. Boyd

Airtel

To: SAC, Atlanta (157-788)

From: Director, FBI (44-25879)

PENVEC
CC: ATLANTA

JUNK

Enclosed are two copies of a Departmental memorandum from AAG J. Walter Yeagley, dated 12/5/66, together with two copies of its attachment, memorandum for the Attorney General from AAG John Doar.

You are to check appropriate logs, indices, and any other appropriate records for any information which may have been obtained from any microphone or technical surveillance concerning any of the subjects or attorneys mentioned under Item No. Three of enclosed memorandum from AAG Doar.

Handle this matter immediately and wtel results under "JUNK" caption. Specifically advise in your communication the identity of the source, its location, dates of operation, and circumstances in any instance where pertinent information was obtained. Also specifically advise whether or not any technical or microphone surveillance was directed at any of the individuals mentioned under Item No. Three of AAG Doar's memorandum.

You are to afford this matter immediate and continuous attention until the project is completed. No delays will be tolerated.

If your file contains any information indicating the listed persons resided or were active in any territory covered by other divisions, you should have the records of those divisions checked and the results included in your reply. Wtel within three days.

MAILED 23
DEC 8 1966
COMM-FBI

Tolson
DeLoach
Mohr
Wick
Casper
Callahan
Conrad
Felt
Gale
Rosen
Sullivan
Tave
Trotter
Tele. Room
Holmes
Gandy

44-25879-505

Enc. (4)

REC 13

JJT:sjk
(4)

6 DEC 12 1966

SEE NOTE - PAGE TWO

MAIL ROOM ☐ TELETYPE UNIT ☐

Airtel to SAC, Atlanta
RE: PENVIC
44-25873

NOTE: The Penvic case concerns the shooting of Lt. Col. Lemuel Penn at Athens, Ga., 7/11/64. Six subjects were indicted by a Federal Grand Jury on Federal CR conspiracy charges. Subjects Sims and Myers did the shooting and were convicted. Each received maximum sentence of ten years imprisonment. Department advised this case is now on appeal.

The Department has requested that the names of defendants, subjects, and attorneys be checked against indices to determine whether any appear in any technical or microphone surveillance recording, log, or file.

Request being submitted by airtel in view of numerous names forwarded by the Department to be checked against field office records. Department's request regarding other cases being handled separately.

Director, FBI December 5, 1966

J. Walter Yeagley, Assistant Attorney
General, Internal Security Division

WIRETAPPING OR ELECTRONIC SURVEILLANCES
CIVIL RIGHTS DIVISION

Personal

The Acting Attorney General has asked me to forward to you the attached memo which he received from Assistant Attorney General John Doar of the Civil Rights Division. It is requested that all of the listed names of defendants, subjects and attorneys be checked against your indices to determine whether any appears in any wiretap or electronic surveillance recording, log or file.

It would be appreciated if you could give this matter your prompt attention. I would suggest your reply be sent directly to Mr. Doar with a copy to this office.

1 - [illegible]

94-25875-
NOT RECORDED
145 DEC 13 1966

ASSISTANT ATTORNEY GENERAL

Department of Justice
Washington

MEMORANDUM FOR THE ACTING ATTORNEY GENERAL

Re: Evidence obtained by wiretapping or electronic surveillance. MEMO NO. 493, November 3, 1966.

In your memorandum of November 3, 1966, to all United States Attorneys, you solicited information regarding cases or investigations in the development of which wiretapping or electronic surveillance may have been used by investigating agents.

I have no information that wiretapping or electronic eavesdropping were used in developing evidence in any investigations or cases pending in this Division. However, this Division has had several complicated cases involving allegations of conspiracy by members of various Ku Klux Klan groups. Confidential information from various sources unknown to me was used in developing the facts in several of these cases. In considering court action, or further court action, in these cases and matters I would like to have the assurance, and would like to be in a position to assure the court, that no wiretapping or electronic surveillance had been used in developing the facts.

The cases and matters which I refer to, the defendants or subjects involved, and the attorneys for the defendants, are as follows:

[redacted] b7c

144-0-5573

4-750 (2-7-79)

XXXXXX
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FEDERAL BUREAU OF INVESTIGATION
FOIPA DELETED PAGE INFORMATION SHEET

1 Page(s) withheld entirely at this location in the file. One or more of the following statements, where indicated, explain this deletion.

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☐ Information pertained only to a third party. Your name is listed in the title only.

☐ Document(s) originating with the following government agency(ies) _____ _____, was/were forwarded to them for direct response to you.

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44-25873-505 ENCLOSURE PAGE 3.

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X NO DUPLICATION FEE X
X FOR THIS PAGE X
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FBI/DOJ

3. United States v. Herbert Guest (M.D. Ga.) Violation of 18 U.S.C. 241; two defendants convicted by jury July 1, 1966; case now pending on appeal.

Defendants
Herbert Guest
James Spurgeon Lackey
Cecil William Myers
Denver Phillips
Joseph Howard Sims
George Hampton Turner

Suspects
Thomas Folendore
[redacted]
Tom Hicks
Tom Whitehead
Paul Strickland

b7c

Attorneys
James Hudson
Harold Boggs
Robert Thompson

4. [redacted]

b7c

4-750 (2-7-79)

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FEDERAL BUREAU OF INVESTIGATION
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☐ Information pertained only to a third party. Your name is listed in the title only.

☐ Document(s) originating with the following government agency(ies) _____ _____, was/were forwarded to them for direct response to you.

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☐ For your information: _____

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44-25873-505 ENCLOSURE PAGES 5 & 6

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X FOR THIS PAGE X
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FBI/DOJ

12/9/66

1 - Mr. Fehl

Airtel

To: SAC, Atlanta (157-788)

From: Director, FBI (44-25873)

PENVIC
CO: ATLANTA

JUNE

ReBuairtel 12/8/66.

In searching your indices and records pertaining to the names submitted with reBuairtel, you should include in your search all known aliases, variations, breakdowns, and build-ups.

FCF:sjk
(4)

REC 22 EX-103

1-1-35 5713-506

6 DEC 13 1965

Tolson
Belmont
Mohr
Wick
Casper
Callahan
Conrad
Felt
Gale
Rosen
Sullivan
Tavel
Trotter
Tele. Room
Holmes
Gandy

MAILED 7
DEC 9 1966
COMM-FBI

DEC 9 1966

DEC 1966

MAIL ROOM ☑ TELETYPE UNIT ☐

4-312 (Rev. 1-18-62)

Date of Mail 12-20-64

Has been removed and placed in the Special File Room of Records Branch.

See File 66-2554-7530 for authority.

Subject JUNE MAIL Service

Removed By

File Number 44-25873-507

Permanent Serial Charge Out

12/20/66

1 - Mr. Hines

Airtel

To: SAC, Atlanta (157-788)

From: Director, FBI (44-25873)

PENVIC
CO: ATLANTA

For the information of offices other than Atlanta receiving this communication, this case involves the shooting of Lt. Col. Lemuel A. Penn in the vicinity of Athens, Georgia, on 7/11/64. Six subjects, Herbert Guest, James Spurgeon Lackey, Cecil William Myers, Denver Phillips, Joseph Howard Sims, and George Hampton Turner, were indicted by a grand jury on Federal Civil Rights charges in connection with the shooting. Myers and Sims were found guilty of the charges and sentenced to ten years. Their conviction is now pending appeal. The other four subjects were acquitted. The subjects were represented by attorneys James Hudson, Harold Boggs, and Robert Thompson. Suspects in the investigation who were not indicted were Thomas Polendore, Tom Hicks, Paul Strickland, [redacted], and Tom Whitehead. b7C

The Department has requested that it be advised whether the name of any of the above subjects, attorneys, or suspects appears in any wire tap or electronic surveillance recording, log or file. In this regard, the Department has posed the following specific questions: G

1. "Whether the named individual appears to be present at, or a participant in, conversations overheard by any electronic device which are reflected in any recordings,

Enclosures (12)

2 - Detroit (Enclosures 2)
2 - Milwaukee (Enclosure 1)
2 - New York (Enclosures 6)
2 - Pittsburgh (Enclosure 1)

EX-112 44-25873-507

REC-48 6 DEC 22 1966

MAILED 20
DEC 20 1966
FBI

Tolson
DeLoach
Mohr
Wick
Casper
Callahan
Conrad
Felt
Gale
Rosen
Sullivan
Tavel
Trotter
Tele. Room
Holmes
Gandy

JWH:sjk
(12)

F788

MAIL ROOM TELETYPE UNIT

CONTINUED - OVER

transcripts, logs, notes, memoranda or other records of any such device.

2. "If so, and if such recordings, transcripts, logs, notes, memoranda or other records still exist, would you please make them available to us.

3. "Did the information from any such device appear directly or indirectly in reports made in reference to the above individual by your agency. If so, would you please advise us of the reports in which such information appeared and furnish us with copies of these reports if you have not already done so."

A search of index cards which have been submitted by the field with regard to persons monitored on technical and microphone installations has provided a number of cards on individuals who may or may not be identical with the persons listed above. Copies of these cards are enclosed for the following offices as indicated below.

Atlanta:	[redacted]	2 cards
Detroit:		2 cards
Milwaukee:		1 card
New York:		3 cards
		2 cards
		1 card
Pittsburgh:		1 card

b7c

The search of records by offices receiving copies of index cards is not to be limited to the individual conversations indicated by the cards but will include all conversations monitored for the persons whose names appear on the cards.

Offices receiving copies of index cards are to immediately check their files for information pertinent to the Department's request. It is anticipated that in many instances the office will be able to eliminate the reference on the basis that the files of the office will contain sufficient information

to show that the person monitored could not be identical with any of the persons listed above.

Offices receiving cards are to complete their file review and submit the results to the Atlanta Office within two days of the receipt of this communication. With regard to names which are determined to be either identical with the listed persons or which cannot be eliminated on the basis of established nonidentity, the Atlanta Office, in addition to being furnished the details of the conversations monitored and copies of the logs, should also be furnished all available background information relative to the person who was monitored in order that the Atlanta Office may make a determination as to whether the person monitored is identical with the listed persons.

The Atlanta Office will submit a summary to the Bureau no later than 12/30/66, setting forth the information necessary for the Bureau to reply to the Department's inquiry.

One copy of each card is also enclosed for the Atlanta Office.

For your information, all of the listed individuals on whom cards are being forwarded are white.

12/22/66

1 - Mr. Hines

PLAINTEXT

TELETYPE URGENT

TO SACS ATLANTA
DETROIT
MILWAUKEE
NEW YORK
PITTSBURGH

FROM DIRECTOR FBI

PENVIC; OO: ATLANTA.

REBUAIRTEL DECEMBER TWENTY LAST.

ALL OFFICES ARE TO HANDLE AS QUICKLY AS POSSIBLE AND REPLY BY TELETYPE RATHER THAN MAIL WHEREVER FEASIBLE IN ORDER THAT THIS PROJECT CAN BE COMPLETED AT THE EARLIEST POSSIBLE MOMENT AND NO LATER THAN BUDED OF DECEMBER THIRTY NEXT.

JWH:sjk
(3)

REC- 62

FEDERAL BUREAU OF INVESTIGATION
U. S. DEPARTMENT OF JUSTICE
COMMUNICATIONS SECTION
DEC 22 1966
TELETYPE

ST-105

62-25873-505

19 DEC 23 1956

TELETYPE UNIT
DEC 22 1966
ENCODED MESSAGE

61 DEC 30 1966

Olson
Belmont
Mohr
Wick
Casper
Callahan
Conrad
Felt
Gale
Rosen
Sullivan
Tavel
Trotter
Tele. Room
Holmes
Gandy

MAIL ROOM ☐ TELETYPE UNIT ☐

4-312 (Rev. 1-18-62)

Date of Mail 12-28-64

Has been removed and placed in the Special File Room of Records Branch.

See File 66-2554-7530 for authority.

Subject JUNE MAIL Purge

Removed By

File Number 44-15503-509

Permanent Serial Charge Out

21

ORIGINAL TEXT

12-28-66

CODE

TELETYPE
RADIOGRAM

JUNE

1 - Mr. McDonough

URGENT

mc Donough

All SAC radio contact at 2 p.m. Message must reach Code Room by 12 noon. Send by urgent teletype to offices not having radio contact today.

67

TO SACS ATLANTA
DETROIT
MILWAUKEE
NEW YORK
PITTSBURGH

FROM DIRECTOR FBI

PENVIC

REBUAIRTEL DECEMBER TWENTY LAST AND BUTEL DECEMBER TWENTY-TWO LAST.

THIS MATTER MUST BE COMPLETED AND RESULTS SUBMITTED TODAY.

BUTELS.

EJM:rmr
(3)

NOTE: This case involves the killing of Lt. Col. Lemuel Penn, Negro educator. Department requested information as to possible use of any electronic surveillances or wiretaps in this case.

REC 17. 44-258-73-50

Tolson
DeLoach
Mohr
Wick
Casper
Callahan
Conrad
Felt
Gale
Rosen
Sullivan
Tavel
Trotter
Tele. Room
Holmes
Gandy

MAIL ROOM TELETYPE UNIT

TELETYPE UNIT
DEC 28 1966
12:57 PM
ENCODED MESSAGE

FEDERAL BUREAU OF INVESTIGATION
U.S. DEPARTMENT OF JUSTICE
COMMUNICATIONS SECTION
DEC 28 1966
TELETYPE

DEC 28 1966

4-312 (Rev. 1-16-62)

Date of Mail 12. 12. 64.

Has been removed and placed in the Special File Room of Records Branch.

See File 66-2554-7530 for authority.

Subject JUNE MAIL Panic

Removed By

File Number 44-25813-516

Permanent Serial Charge Out

FD-36 (Rev. 5-22-64)

FBI

Date: 12/12/66

Transmit the following in _____
(Type in plaintext or code)

Via AIRTEL AIRMAIL
(Priority)

TO: DIRECTOR, FBI (44-25873) "JUNE"

FROM: SAC, ATLANTA (66-825)

RE: PENVIC

Re Bureau airtel to Atlanta 12/9/66.

By airtel dated 12/9/66, captioned as above, Atlanta submitted information required by Bureau airtel to Atlanta 12/8/66. Instructions set forth in referenced Bureau airtel were complied with in Atlanta airtel of 12/9/66.

(3) - Bureau (RM)
1 - Atlanta
AGS:cmp
(4)

REC 26
ST-118 44-25873-510

1 DEC 18 1966
1-5-67

Approved: _____ Sent _____ M Per _____
Special Agent in Charge

FEDERAL BUREAU OF INVESTIGATION
U. S. DEPARTMENT OF JUSTICE
COMMUNICATIONS SECTION
DEC 28 1966
TELETYPE

Mr. Tolson
Mr. DeLoach
Mr. Mohr
Mr. Wick
Mr. Casper
Mr. Callahan
Mr. Conrad
Mr. Felt
Mr. Gale
Mr. Rosen
Mr. Sullivan
Mr. Tavel
Mr. Trotter
Tele. Room
Miss Holmes
Miss Gandy

FBI DETROIT

341PM URGENT 12/28/66 MAJ

TO DIRECTOR AND ATLANTA

FROM DETROIT (66-2174) 1P

PENVIC

REBUTEL DECEMBER TWENTYEIGHT INSTANT.

DETROIT BY AIRTEL DECEMBER TWENTYONE LAST ADVISED ATLANTA THAT DETROIT INDEX CARD RE [redacted] NOT IDENT WITH [redacted] IN INSTANT CASE.

END

RAM

FBI WASH DC

Q

EX-103

REC-121

44-25073-511

15 JAN 3 1967

51 JAN 11 1967

[redacted]

4-312 (Rev. 1-18-62)

Date of Mail 12 - 5 - 66

—Has been removed and placed in the Special File Room of Records Branch.

See File 66-2554-7530 for authority.

Subject JUNE MAIL Domic

Removed By

File Number 44 - 25873 - 512

Permanent Serial Charge Out

UNITED STATES GOVERNMENT

Memorandum

TO : Director, FBI

DATE: December 5

FROM : J. Walter Yeagley, Assistant Attorney General, Internal Security Division

SUBJECT: WIRETAPPING OR ELECTRONIC SURVEILLANCES
CIVIL RIGHTS DIVISION

The Acting Attorney General has asked me to forward to you the attached memo which he received from Assistant Attorney General John Doar of the Civil Rights Division. It is requested that all of the listed names of defendants, subjects and attorneys be checked against your indices to determine whether any appears in any wiretap or electronic surveillance recording, log or file.

It would be appreciated if you could give this matter your prompt attention. I would suggest your reply be sent directly to Mr. Doar with a copy to this office.

REC-15 44-38873-SD 12

DEC 9 1966

NOT RECORDED
199 DEC 9 1966

ASSISTANT ATTORNEY GENERAL

Department of Justice
Washington

MEMORANDUM FOR THE ACTING ATTORNEY GENERAL

Re: Evidence obtained by wiretapping or electronic surveillance. MEMO NO. 493, November 3, 1966.

In your memorandum of November 3, 1966, to all United States Attorneys, you solicited information regarding cases or investigations in the development of which wiretapping or electronic surveillance may have been used by investigating agents.

I have no information that wiretapping or electronic eavesdropping were used in developing evidence in any investigations or cases pending in this Division. However, this Division has had several complicated cases involving allegations of conspiracy by members of various Ku Klux Klan groups. Confidential information from various sources unknown to me was used in developing the facts in several of these cases. In considering court action, or further court action, in these cases and matters I would like to have the assurance, and would like to be in a position to assure the court, that no wiretapping or electronic surveillance had been used in developing the facts.

The cases and matters which I refer to, the defendants or subjects involved, and the attorneys for the defendants, are as follows:

[redacted]

b7c

44-25472-512

ENCLOSURE

4 Xerox
via 12/7/66

ENCLOSURE

1

4-750 (2-7-79)

XXXXXX
XXXXXX
XXXXXX

FEDERAL BUREAU OF INVESTIGATION
FOIPA DELETED PAGE INFORMATION SHEET

1 Page(s) withheld entirely at this location in the file. One or more of the following statements, where indicated, explain this deletion.

☒ Deleted under exemption(s) _____ with no segregable material available for release to you.

☐ Information pertained only to a third party with no reference to you or the subject of your request.

☐ Information pertained only to a third party. Your name is listed in the title only.

☐ Document(s) originating with the following government agency(ies) _____ _____, was/were forwarded to them for direct response to you.

_____ Page(s) referred for consultation to the following government agency(ies); _____ _____ as the information originated with them. You will be advised of availability upon return of the material to the FBI.

_____ Page(s) withheld for the following reason(s):

_____

_____

_____

☒ For your information: THIS SERIAL IDENTICAL TO ENCLOSURES TO SERIAL 505.

☒ The following number is to be used for reference regarding these pages:
44-25873-512 ENCLOSURE PAGE 2

XXXXXX
XXXXXX
XXXXXX

XXXXXXXXXXXXXXXXXXX
X DELETED PAGE(S) X
X NO DUPLICATION FEE X
X FOR THIS PAGE X
XXXXXXXXXXXXXXXXXXX

FBI/DOJ

3. United States v. Herbert Guest (M.D. Ga.) Violation of 18 U.S.C. 241; two defendants convicted by jury July 1, 1966; case now pending on appeal.

Defendants
Herbert Guest
James Spurgeon Lackey
Cecil William Myers
Denver Phillips
Joseph Howard Sims
George Hampton Turner

Suspects
Thomas Tolendore
Tom Hicks
Paul Strickland
[redacted] Tom Whitehead

b7c

Attorneys
James Hudson
Harold Boggs
Robert Thompson

[redacted]

b7c

4-750 (2-7-79)

XXXXXX
XXXXXX
XXXXXX

FEDERAL BUREAU OF INVESTIGATION
FOIPA DELETED PAGE INFORMATION SHEET

2 Page(s) withheld entirely at this location in the file. One or more of the following statements, where indicated, explain this deletion.

[X] Deleted under exemption(s) (b)(7)(C) with no segregable material available for release to you.

☐ Information pertained only to a third party with no reference to you or the subject of your request.

☐ Information pertained only to a third party. Your name is listed in the title only.

☐ Document(s) originating with the following government agency(ies) _____ _____, was/were forwarded to them for direct response to you.

_____ Page(s) referred for consultation to the following government agency(ies); _____ _____ as the information originated with them. You will be advised of availability upon return of the material to the FBI.

_____ Page(s) withheld for the following reason(s):

_____

_____

_____

☐ For your information: _____

_____

[X] The following number is to be used for reference regarding these pages:
44-25873-512 ENCLOSURE PAGES 405.

XXXXXX
XXXXXX
XXXXXX

XXXXXXXXXXXXXXXXXXX
X DELETED PAGE(S) X
X NO DUPLICATION FEE X
X FOR THIS PAGE X
XXXXXXXXXXXXXXXXXXX

FBI/DOJ

4-312 (Rev. 1-18-62)

Date of Mail 12-11-66

—Has been removed and placed in the Special File Room of Records Branch.

See File 66-2554-7530 for authority.

Subject JUNE MAIL Picnic

Removed By

File Number 114-25573 513

Permanent Serial Charge Out

(Rev. 1-27-66)

DECODED COPY

☐ AIRGRAM ☐ CABLEGRAM ☐ RADIO ☒ TELETYPE

1:52 PM EST 12-11-66 URGENT BEC

TO DIRECTOR AND ATLANTA

FROM KNOXVILLE 111845

JUNE.

PENVIC.

KNOXVILLE OFFICE HAS NO RECORD OF JAMES SPURGEON LACKEY BEING PRESENT AT, OR A PARTICIPANT IN, CONVERSATIONS OVERHEARD BY ANY ELECTRONIC DEVICE OR WIRE TAP.

RECEIVED: 1:57 PM HL

REC-4 513

If the intelligence contained in the above message is to be disseminated outside the Bureau, it is suggested that it be suitably paraphrased in order to protect the Bureau's cryptographic systems.

4-312 (Rev. 1-18-52)

Date of Mail 12-28-66

Has been removed and placed in the Special File Room of Records Branch.

See File 66-2554-7530 for authority.

Subject JUNE MAIL Price

Removed By [illegible] 1967

File Number 111-[illegible]-[illegible]

Permanent Serial Charge Out

4-3 (Rev. 1-27-66)

NA 12-24-66 cmc 4:11pm

DECODED COPY

☐ AIRGRAM ☐ CABLEGRAM ☐ RADIO ☒ TELETYPE

Tolson
DeLoach
Mohr
Wick
Casper
Callahan
Conrad
Felt
Gale
Rosen
Sullivan
Tavel
Trotter
Tele. Room
Holmes
Gandy

722 PM URGENT 12-28-66 JDW

TO DIRECTOR (44-25873)

FROM ATLANTA 282345

JUNE.

PENVIC.

REBUREAU AIRTEL TO ATLANTA DECEMBER 20, 1966 AND TELETYPE DECEMBER 28, 1966; DETROIT AND PITTSBURGH AIRTELS DECEMBER 21, 1966, MILWAUKEE AIRTEL AND NEW YORK TELETYPE DECEMBER 22, 1966, TO ATLANTA, AND KNOXVILLE TELETYPE TO BUREAU DECEMBER 11, 1966.

REVIEW OF LOGS, FILES AND OTHER PERTINENT RECORDS BY ATLANTA AND EACH REFERENCED AUXILIARY OFFICE DOES NOT REFLECT TECHNICAL, MICROPHONE OR OTHER ELECTRONIC COVERAGE OF ANY INDIVIDUAL DETERMINED TO BE IDENTICAL WITH THE NAMES OF SUBJECTS, SUSPECTS OR ATTORNEYS IN CAPTIONED CASE WHOSE NAMES WERE SET FORTH IN REFERENCED BUREAU AIRTEL.

REC-4 44-25873-514
EX-103

RECEIVED: 7:31 PM RAK 6 JAN 16 1967

cc McDonough

If the intelligence contained in the above message is to be disseminated outside the Bureau, it is suggested that it be suitably paraphrased in order to protect the Bureau's cryptographic systems.

4-312 (Rev. 1-18-62)

Date of Mail 12-9-66

—Has been removed and placed in the Special File Room of Records Branch.

See File 66-2554-7530 for authority.

Subject JUNE MAIL Panic

Removed By [illegible]

File Number 44-[illegible]-515

Permanent Serial Charge Out

RE: BERNARD S. LEE V. CLARENCE M. KELLEY, ET AL.
(U.S.D.C., D.C.) CIVIL ACTION NUMBER 76-1185

SOUTHERN CHRISTIAN LEADERSHIP CONFERENCE (SCLC)
V. CLARENCE M. KELLEY, ET AL (U.S.D.C., D.C.)
CIVIL ACTION NUMBER 76-1186

Serial 515 pulled from this file under court order of U.S. District Judge John Lewis Smith, Jr., and sent to National Archives.

4-312 (Nov. 1-18-62)

Date of Mail 1-5-67

Has been removed and placed in the Special File Room of Records Branch.

See File 66-2554-7530 for authority.

Subject JUNE MAIL Panic

Removed By 65 JAN 2 1967

File Number 44-25873-516

Permanent Serial Charge Out

TO : Mr. John Doar
Assistant Attorney General

DATE: January 5, 1967

FROM : Director, FBI

1 - Mr. DeLoach
1 - Mr. Rosen
1 - Mr. Malley
1 - Mr. McGowan
1 - Mr. Hines

SUBJECT: HERBERT GUEST, AND OTHERS;
LIEUTENANT COLONEL LEMUEL A. PENN, DECEASED,
USAR SN 0348661, AND OTHERS - VICTIMS
CIVIL RIGHTS - NATIONAL FIREARMS ACT .

Reference is made to the letter of Assistant Attorney General J. Walter Yeagley, Internal Security Division, dated December 5, 1966, under the caption, "Wiretapping Or Electronic Surveillances, Civil Rights Division." Referenced letter enclosed a copy of your memorandum to the Acting Attorney General, wherein you indicated assurance was desired that no wiretap or electronic surveillance was used in developing the facts of this case.

In regard to this case, which you referred to in your memorandum as United States vs. Herbert Guest, no wiretap or electronic surveillance was used in developing the facts of this case, and none of the information that has been furnished to you concerning this matter was developed through the use of any wiretap or electronic surveillance. You are also advised that the individuals concerning whom you inquired have not appeared to be present at or participants in conversations overheard through use of any electronic device.

In accordance with the discussion you and Mr. Owen had on January 3, 1967, with Mr. McGowan and Mr. Martindale of the Federal Bureau of Investigation, this reply to your inquiry is being handled in accordance with the standard form set forth in Mr. Vinson's memorandum of November 2, 1966.

EX 104 REC 17 44-25873-516

5 JAN 9 1967

1 - Mr. J. Walter Yeagley
Assistant Attorney General, Internal Security Division

44-25873

JWH:sjk
(9)

SEE NOTE - PAGE TWO

JAN 23 1967

Mohr
Wick
Casper
Callahan
Conrad
Felt
Gale
Rosen
Sullivan
Tavel
Trotter
Tele. Room
Holmes
Gandy

TELETYPE UNIT

Mr. John Doar

NOTE: This case involves the shooting of Lt. Col. Lemuel A. Penn in Athens, Ga., on 7/11/64. Six subjects were indicted on Federal CR charges in connection with the shooting, two of whom were convicted and sentenced to ten years. The other four defendants were acquitted.

By letter dated 12/5/66, the Department requested information concerning whether any wiretapping or electronic surveillance had been used regarding the six defendants, five suspects, and three attorneys in the case. In a conference with Mr. Doar and Mr. D. R. Owen of the CRD on 1/3/67, Doar and Owens stated that it is only necessary to cover the points in the standard inquiry form submitted to the Bureau by the Criminal Division on 11/2/66. This differs from the Internal Security Division's standard request, which was originally forwarded to the Bureau with Department's request on 12/5/66, in that the Internal Security Division's form also asks whether the persons of inquiry were ever mentioned on any other wiretap or electronic surveillance, whereas the Criminal Division's form merely asks whether the individuals were subject to an electronic surveillance or appeared to be present at or participating in conversations overheard by an electronic surveillance.

5/17/67

GENERAL INVESTIGATIVE DIVISION

This case concerns the shooting of Lt. Col. Lemuel A. Penn in vicinity of Athens, Georgia, on 7/11/64. Six Klansmen were indicted by Federal Grand Jury on Federal Civil Rights Conspiracy charges. Two of the subjects, Joseph Howard Sims and Cecil William Myers, were convicted of the charges on 7/1/66; the other four subjects were found not guilty. The conviction of Sims and Myers was appealed to the Fifth Circuit Court of Appeals.

JWH:cs

FEDERAL BUREAU OF INVESTIGATION
U. S. DEPARTMENT OF JUSTICE
COMMUNICATION SECTION
MAY 17 1967

TELETYPE

BBI WASH DC

FBI ATLANTA

10:37AM EDT URGENT 5-17-67 MRK

TO: DIRECTOR, FBI (44-25873)

FROM: ATLANTA (157-788)

PENVIC

US ATTORNEY
~~USA~~ FLOYD M. BUFORD, MACON, GEORGIA, IN RECEIPT THIS A.M. TWENTYEIGHT PAGE OPINION FROM U.S. FIFTH CIRCUIT COURT OF APPEALS AFFIRMING CONVICTIONS OF JOSEPH HOWARD SIMS AND CECIL WILLIAM MYERS IN ~~USDC~~ US DISTRICT COURT, ~~MDGA~~ MIDDLE DISTRICT GEORGIA. BUFORD STATED ALL THREE JUDGES VOTED FOR AFFIRMATION OF CONVICTIONS. BUFORD ADVISED DEFENSE ATTORNEY HAS REQUESTED CERTIORARI TO APPEAL TO SUPREME COURT. P

END.

TMA

FBI WASH DC

REC 27 44-25873-517

MAY 22 1967

59 MAY 25 1967

MR DELOACH FOR THE DIRECTOR

CC-MR. ROSEN

OPTIONAL FORM NO. 10
MAY 1962 EDITION
GSA FPMR (41 CFR) 101-11.6

UNITED STATES GOVERNMENT

Memoranaum

ROUTING UNIT
10/5/67
ERROR LETTER SENT

TO : DIRECTOR, FBI (44-25873) DATE: 10/4/67

FROM : SAC, WFO (44-558) (P)

SUBJECT: ENVIC
(OO:AT)

Enclosed for the Bureau and Atlanta Office is one photo copy for each of a petition for writ of certiorari, in the case entitled CECIL WILLIAM MYERS and JOSEPH HOWARD SIMS vs. the U.S., case number 554 Miscellaneous, October Term, 1967.

Instant petition was filed in the US Supreme Court (USSC) on 8/22/67. The petitioners seek to have the USSC review ~~for~~ AND reverse judgement of the US Court of Appeals for the 5th Circuit, which on 5/15/67, affirmed judgement of the USDC for the Middle District of Georgia. The records disclose both had been sentenced in the District Court to serve 10 years ~~in~~ imprisonment following their conviction for violation of Title 18, USCA Section 241 (conspiracy against Rights of Citizens). They, together with HAMPTON TURNER, who was subsequently acquitted by the jury, were jointly tried for engaging in a conspiracy to injure and intimidate Negro citizens in the vicinity of Athens, Georgia, in the free exercise of their constitutional rights.

Petition for rehearing was denied by the Court of Appeals on 6/19/67.

The petition does not contain any reference to the FBI. It alleges error on the part of the trial court in admitting ~~the~~ statement by an alleged co-conspirator, which was

(2) - Bureau
1 - Atlanta (RM), 57-588
1 - WFO

RCV:mav
(4)

1 ENCLOSURE

"ENCL. BEHIND FILE"

EX-108

REC 37 44-25873-518

OCT 6 1967

SDX

590CT 24 1967

Buy U.S. Savings Bonds Regularly on the Payroll Savings Plan

made to a third party when these petitioners were not present, and in refusing to allow counsel for petitioners to ask a witness for the Government, a question which the petitioners contend would have impeached the witness. The petition also alleges error on the part of the trial court in admitting evidence of incidents which occurred at Crawfordville, Georgia, more than a year after the return of the indictment.

WFO will follow progress of this case in the Supreme Court.

CECIL WILLIAM MYERS and
JOSEPH HOWARD SIMS,
Petitioners

VS

UNITED STATES OF AMERICA,
Defendant

071967

NUMBER 554 Misc.

IN THE SUPREME COURT
OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

COMES NOW, the Petitioners in the above matter and showeth that:

1.

In Case Number 23,847, United States Court of Appeals for the Fifth Circuit, said Court found against your Petitioners and upheld their conviction and sentence of 10 years in prison. A copy of said decision is attached hereto as Exhibit 1.

2.

The jurisdiction is envoked under Rule 19 of this Court and on the ground that the United States Court of Appeals for the Fifth Circuit has decided an important question of Federal Law which has not been, but should be, settled by this Court.

3.

The date of the judgment entered in said case was May 15, 1967.

RECEIVED
AUG 22 1967
OFFICE OF THE CLERK
SUPREME COURT, U.S.

873-518

4.

The date of the order respecting the Rehearing was June 19, 1967, when the Rehearing was denied.

5.

The statutory provision or other provisions believed to confer jurisdiction on this Court is Rule 19 of this Court and the Fifth Amendment of the United States Constitution.

6.

The questions presented for review are as follows:

a. Did the Trial Court err in admitting the statement by an alleged co-conspirator which was made to a third party when these Petitioners were not present? The Court allowed a Government witness, Tom Stevens, to testify that one of the alleged co-conspirators, Herbert Guest, told him on the night that Lemuel Penn was murdered, that these Petitioners, with another co-conspirator, had left out of his place, "chasing a Negro car with a D. C. tag on it," and that they had Herbert Guest's gun. Herbert Guest was not tried with these

No. 25873-518

Petitioners. Counsel for Petitioners urged a standing objection which had been made earlier in the trial and also objected to the evidence on the ground that such a statement would have to be a statement which was made in "furtherance" of the conspiracy. Petitioners contended that such a statement was not in "furtherance" of the conspiracy.

b. Did the Trial Court err in refusing to allow Counsel for these Petitioners to ask a witness for the Government a question which the Petitioners contended would have impeached the witness? The Court did not allow Counsel for Petitioners to ask a Government witness, Tom Stevens, whether or not he had ever pled guilty to dispensing amphetamine sulphate tablets without a prescription in violation of the Pure Food, Drug and Cosmetic Act and if he was still serving a probationary sentence under that plea. Petitioners contended that the violation of this particular Act was a felony and a crime involving moral turpitude and that they had the right to impeach the witness by asking him these questions.

c. Did the Trial Court err in admitting evidence of incidents which occurred at Crawfordville, Georgia, more than one year after the return of the indictment? The Court allowed Government witnesses, Omer Turner, George Turner and Sheriff Moore, to testify concerning acts which occurred at Crawfordville, Georgia, more than one year after the indictment was returned. The acts concerned an assault on the two Turners and the collection by the Sheriff from the Petitioners and others of an arsenal of weapons. Petitioners contended this evidence was immaterial, irrevelent and highly prejudicial and allowed them to be convicted for something which they were not charged with in the indictment.

7.

Petitioners contend that the admission of this evidence violated the due process clause of the Fifth Amendment to the United States Constitution which is set out as follows: No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or

naval forces, or in the militia, when acts of service in time of war or other dangers; nor shall any person be subject for the same offense to be put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty or property, without due process of law; nor shall private property be taken for public use, without just compensation.

8.

These Petitioners, along with certain others, were indicted in the United States District Court for the Middle District of Georgia, for a violation of 18 USCA 241 on various grounds. This case was previously in the Supreme Court of the United States on a direct appeal by the United States from a judgment dismissing the case in the United States Court for the Middle District of Georgia. The case was subsequently reversed by the Supreme Court of the United States and sent back for trial. The United States subsequently abandoned all the allegations alleged to be grounds

for the alleged conspiracy except one which was to the effect that these Petitioners, along with the others who were acquitted, and persons unknown, conspired to violate the right of Negro citizens to travel in interstate commerce and to use the facilities of interstate commerce. A trial was subsequently had, these Petitioners, out of the six who were tried, were convicted and sentenced to 10 years in prison. The others were acquitted.

9.

A review of a judgment of a Federal Court is sought and the basis for the Federal jurisdiction in the Court of first instance is that the Petitioners were alleged to have violated 18 USCA 241 in that they conspired to violate the right of Negro citizens to travel in interstate commerce and to use the facilities of interstate commerce. This case was previously in the Supreme Court of the United States and the Supreme Court of the United States held that the allegations of the indictment were sufficient and did, in fact, allege a violation of 18 USCA 241.

A direct and concise argument amplifying the reasons relied on for the allowance of the Writ is as follows:

The Court erred in admitting in evidence the statement of an alleged co-conspirator made to a third present person out of the presence of these Petitioners.

Tom Stevens was called as a Government witness. (T-551). He testified that he went to Herbert Guest's garage before daybreak on July 11, 1964. (T-557). Colonel Lemuel Penn was killed on July 11, 1964, near Athens, Georgia, in Madison County, Georgia, (T-425, T-435, T-436, and T-437).

Counsel for Petitioners objected to the Government going into what Herbert Guest said on the ground that any such statement to be admissible, must be the type statement that is in furtherance of a conspiracy. (T-558 near the bottom of the page.)

The Court allowed the witness to testify as follows beginning at T-551 going through T-562 and on T-563:

Q. Well, let me ask you this question. Did Mr. Guest mention to you the name James Lackey or Howard Sims or Cecil Myers? Were their names mentioned this morning of July 11 when you were down there in connection with the boat?

A. Yes sir.

Q. What did he say about those three men?

A. He said they left there - er - they were chasing a Negro car with a D. C. tag on it.

Q. Said they left there?

A. Yes sir.

Q. Doing what?

A. Chasing a car with a D. C. tag on it.

Q. Was anything said about a gun?

A. No sir, they wasn't anything said about a gun then.

Q. Well, was something said about the gun later?

A. He said they had his gun.

Q. Said who had his gun?

A. Them boys.

Q. Name the boys you are talking about.

A. Howard and -

Q. Howard Sims?

A. Yes sir.

Q. And who else?

A. And James Lackey.

Q. James Lackey?

A. Yes sir. And Myers.

Q. Cecil Myers?

A. Yes sir.

Q. Said they had his gun?

A. Yes.

Q. Now, what was it about - I didn't quite follow you on it - what was it about chasing a Negro?

A. I didn't understand that part.

Colloquy of counsel left out.

Q. What was said about chasing a Negro?

A. Said they left there chasing some, were going to follow some, and that he would have went with them but wasn't nobody there but him.

Q. Was anything said about where the Negroes were from?.

A. Said it was a D. C. tag, Washington, D. C. tag.

On the face of it, this evidence was hearsay and was immaterial, irrelevant and very highly prejudicial to these Petitioners.

Of course, counsel recognizes the long-established rule that declarations of co-conspirators made in furtherance of the conspiracy and during its pendency are admissible against the other co-conspirators. This rule is unquestioned. It is also unquestioned by Counsel for Petitioners that the Trial Judge had the burden of determining if a prima facie case of conspiracy had been made before he let this evidence go to a jury and once he had made this determination, it was a question for the jury to decide as to whether or not a conspiracy existed before they took the evidence offered into consideration. However, the point in this case is that the statement was not made in the furtherance of the conspiracy.

In order for the statement by Herbert Guest to have been admissible, it must have been

made in the furtherance of the alleged conspiracy. "Only those declarations of alleged co-conspirators which are made in the furtherance (emphasis supplied) of conspiracy are admissible against other alleged conspirators, etc. 218 F. 2nd 275, Lott et al vs. United States, Headnote 10, at page 676. "It is familiar learning that any statement made by conspirators in furtherance (emphasis added) of the conspiracy and during its pendency is admissible against each co-conspirator, etc." The Court also cites the cases of Clune vs. United States, 159 U. S. 590, 593; Logan vs. United States, 144 U. S. 263. "This Court has long held that a declaration made by one conspirator, in furtherance (emphasis ours) of a conspiracy and prior to termination may be used against the other conspirator." 352 U. S. 232, Paoli vs. United States, at page 237. It is further stated in the case of Krulewitch vs. United States, 336 U. S. 440 at page 443, "There are many logical and practical reasons that could be advanced against a special evidentiary rule that permits

out-of-Court statements of one conspirator to be used against another. But, however cogent these reasons, it is firmly established that where made in furtherance (emphasis ours) of the objectives of a going conspiracy, such statements are admissible as exceptions to the hearsay rule. This prerequisite to admissibility, that hearsay statements made by some conspirators to be admissible against others must be made in furtherance (emphasis ours), of the conspiracy charge has been scrupulously observed by the Federal Courts."

There is no question at all that a statement made by a co-conspirator in the furtherance of a conspiracy is admissible against other co-conspirators. However, Petitioners hasten to call the Court's attention to the fact that such a statement must be made in "furtherance" of the conspiracy.

What does the word "furtherance" mean? It is stated in Powers vs. The Commonwealth, 144 Kentucky 237, "The word "furtherance" as applied

to the act of one accomplice in the furtherance of a criminal project has a well-defined and generally accepted meaning. It is the act of furthering, or helping forward, or promotion, or advancement. It is stated in the case of People vs. Smith, 151 California, 619, "The word 'furtherance' within the rule that no declarations except those made during the pendency of a conspiracy and in 'furtherance' of its objects, can be used against a co-conspirator, means an act, statement, or declaration which in some measure aids or assists toward the consummation of the object of the conspiracy." It is stated in the case of People vs. Trilck, 374 Michigan 118, "The word 'furtherance' as used in relation to admissibility of acts and declarations of conspirators done or made in furtherance of the object of the conspiracy is not a technical word, obscure in meaning, but it means face of preferment: advancement, promotion.

Websters New International Dictionary, Second Edition Unabridged, states that the word

"furtherance" means the act of furthering, helping forward, promotion, advancement, progress.

The statement by Herbert Guest to a third party out of the presence of the Petitioners does not meet the "furtherance" test. The statement by Herbert Guest did not in any way further, help forward, promote, advance, aid, assist, help consummate or progress the alleged conspiracy in any way whatsoever. The statement by Herbert Guest was in essence that the Petitioners and another had followed Colonel Lemuel Penn's car and had Herbert Guest's shotgun with them. The statement in no way furthered the alleged conspiracy.

It was clearly error for the Court to admit this statement as it was hearsay.

This hearsay evidence was without doubt highly prejudicial to these Petitioners especially since the Government went into great detail concerning the murder of Colonel Lemuel Penn on July 11, 1964, the testimony by the Government witnesses taking 218 pages of transcript, beginning at T-423 until T-592, and rebuttal from T-669 until T-718.

The Court made a highly harmful error in admitting this evidence.

The next harmful error was the Court's refusal to allow Counsel for Petitioners to ask the Government's witness, Tom Stevens, a question which would have impeached him.

"There is no question but there exists a general rule that evidence of Appellant's previous misconduct or other criminal acts is inadmissible. * * * One well-recognized exception is that proof of a prior conviction of a felony is admissible to impeach a witness's credibility. 267 F. 2nd 483, Bush vs. United States, Headnote 8 at page 489. The Court also cites the case of Meeks vs. United States, 163 F. 2nd, 598. "Witness's prior conviction of a felony can be shown to impeach his credibility." 249 F. 2nd, 737 Roberson vs. United States, Headnote 9.

"Rule 26, Federal Rules of Criminal Procedure, in pertinent part, provides, 'The admissibility of evidence and the competency and privileges of witnesses shall be governed, except when an act of Congress or these rules otherwise provide, by the principles of

the Common Law as they may be interpreted by the Courts of the United States in the light of reason and experience.'" At Common Law the inquiry was limited to felony or crimes involving moral turpitude. The rule ordinarily to be followed in this Circuit has been stated as follows: "In criminal cases, a witness may be asked for purposes of impeachment, whether he has been convicted of a felony, infamous crime, petit larceny or a crime involving moral turpitude." Pennix vs. United States, 313 F. 2nd 524, Headnote 8 at page 530.

"It is competent for the purpose of discrediting a witness to show that he has been convicted of a crime of the dignity of a felony or petit larceny." 192 F. 2nd 681, Pearson et al vs. United States, Headnote 22.

Petitioners contend that the crime which the witness, Tom Stevens, had pled guilty to, which is tantamount to a conviction, was a felony. Petitioners will cite authority for this proposition. Petitioners also contend that the crime of dispensing amphetamine sulphate is a crime involving moral

turpitide. Petitioners will cite no authority for this proposition as they can find none but will argue that it is a crime involving moral turpitude.

During the course of the trial, in an attempt to be fair to the Government, Petitioners' counsel asked permission of the Court to approach the bench in the presence of the District Attorney and it was stipulated that Petitioners' counsel wanted to propound the following question to the Government's witness, "Mr. Stevens, have you ever been convicted of a Federal offense in which you received a probationary sentence?" The District Attorney objected. It was stipulated that the question referred specifically to the incident where the witness, Tom Stevens, pleaded guilty to dispensing amphetamine sulphate tablets without a prescription in violation of the Pure Food and Drug and Cosmetic Act. It was further stipulated that these Petitioners wanted to ask the witness if he were still serving, at the time of the trial, the probationary sentence from that offense. (T-597). The Court refused to allow the questions. (Top of T-598).

Petitioners contend that the crime of dispensing amphetamine sulphate in violation of the Federal Law is a felony. Dispensing of amphetamine sulphate is covered in 21 U. S. C. 353 (b) 1 (B), which is prohibited by 21 U. S. C. A. 331. Subsection (a) of 21 U. S. C. A. 333, provides, "Any person who violates any of Section 331 of this Title shall be guilty of a misdemeanor and shall on conviction thereof be subject to imprisonment for not more than one year, or a fine of not more than $1000.00, or both such imprisonment and fine; but if the violation is committed after a conviction of such person under this Section has become final, such person shall be subject to imprisonment for not more than 3 years, or a fine of not more than $10,000.00, or both such imprisonment and fine."

Petitioners contend that a violation of this Statute is a felony and for authority cite 194 F. 2nd 686, Cardiff vs. United States. Headnote 1 of the cited case provides, "Provisions of the Food and Drug Act making the first offense for violation of a certain Section a misdemeanor and the second offense a felony, create a felony (emphasis ours)."

This case refers to 21 U. S. C. A. 333. It was held that a violation of the Act was a felony. The case was appealed directly to the United States Supreme Court as is set out in 344 U. S. 174 where the decision in favor of the Defendant was upheld on other grounds. The United States Supreme Court did not decide on the question of whether or not the violation was a felony. However, the case is authority for the proposition that a violation of the Pure Food and Drug and Cosmetic Act is a felony.

Petitioners contend that the violation was a felony and they should have been allowed to impeach the witness by asking the question denied them.

Without precedent, Petitioners contend that they should be allowed to impeach a man who has pled guilty to a crime involving moral turpitude and that the crime of dispensing amphetamine sulphate is a crime involving moral turpitude. Many Circuits allow impeachment because of a crime involving moral turpitude. Petitioners have not found a case in the Fifth Circuit which allows such impeachment on such grounds

No. 25823-518

but contend that it should be the rule in this Circuit. Petitioners further contend that the dispensing of amphetamine sulphate in violation of the Federal Law, greatly endangers and degrades human persons, and, therefore, it is a crime involving moral turpitude.

This was harmful error.

The third harmful error committed was in allowing evidence concerning certain transactions which took place on the third Sunday in October of 1965, in Crawfordville, Georgia, which is not in the vicinity of Athens, Georgia, and which occurred more than one year after the return of the indictment.

This testimony involved an assault on two Negro citizens of Taliaferro County, Georgia, near Crawfordville, Georgia, and the capturing by the Sheriff of Taliaferro County of an arsenal of weapons in the possession of these Petitioners and others.

The testimony concerning these transactions begins at T-356 and the objection is set out at T-357. After the objection the testimony begins at T-362 and ends at T-422.

This evidence was immaterial, irrelevant, and highly prejudicial to these Petitioners and it was error to admit it.

There is ample authority for the proposition that evidence as to transactions subsequent to the return of the indictment can be admitted for a limited purpose, that is to determine the motive and intent of the Defendants and to matters charged in the indictment, if the circumstances show a sufficient connection from which inferences may reasonably be drawn. One particular case is found in 316 F. 2nd 617 Roe and Stratoray Oil, Inc., vs. United States. However, all of the cases which Petitioners have found involve a case where an overt act is required.

However, in the case at bar which is an indictment for a conspiracy in violation of 18 U. S. C. A. 241, an overt act is not necessary. Intent is the necessary ingredient. Smith vs. United States 157 F. 2nd 721, Certiorari 208 U. S. 618, and The United States vs. Ellis, 43 F. Supp. 321. In other words, intent and motive in the case at bar is the necessary ingredient to the commission of the crime.

In all fairness, when admitting this evidence, the Court before admitting it instructed

Ill. 25823-5M

the jury that it was admitted for the limited purpose of determining the motive and intent of the Defendants who participated in the subsequent transactions with respect to their intent and motive as to the matters charged in the indictment.

However, under the facts of this case, that is to say intent and motive being the main ingredients and no overt act being required, this limitation was no limitation at all. Suppose, the jury had not been convinced beyond a reasonable doubt by all of the other evidence admitted, that these Petitioners were guilty of a conspiracy under 18 U. S. C. A. 241. Then, under the Court's instruction, even as to a limited purpose of motive and intent, the jurors could still have been convinced beyond a reasonable doubt because of this evidence, that these Petitioners did have the motive and intent in violation of 18 U. S. C. A. 241. Under those circumstances these Petitioners might possibly have been convicted solely on evidence of transactions which occurred after the indictment was returned. The evidence would thus have been immaterial, irrelevant, and highly prejudicial to these Petitioners.

The indictment charges that these Petitioners "did * * * conspire * * * in the vicinity of Athens, Georgia, continuing until the date of the indictment (October, 1964) to violate the rights of Negro citizens to travel freely in interstate commerce and to use instrumentalities of interstate commerce within the State of Georgia."

The net result of this admission was to highly prejudice these Petitioners with immaterial and irrelevant matter.

Another result of this admission was to deprive these Petitioners of their right under the Fifth Amendment of the United States Constitution which requires that prosecution be begun by an indictment. To deprive them of this right would no doubt be highly prejudicial to these Petitioners.

As persuasive authority, we cite 361 U. S. 212, Nicholas A. Staronc vs. United States where in an unanimous decision the Supreme Court held that the trial Court erred in allowing admission of a similiar type transaction and charging the jury as to their right to convict on

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was to allow the jurors to convict these Petitioners because of a transaction which occurred subsequently to the return of the indictment, and the same was highly prejudicial, immaterial and irrelevant. It also violated their rights under the Fifth Amendment of the Constitution of the United States and although that specific question was not raised at the trial due to the ineptitude of Counsel for these Petitioners in dealing with complex questions of law, it was, nevertheless, very highly prejudicial, immaterial and irrelevant.

11.

Appended to the petition is a copy of the opinion delivered by the United States Court of Appeals for the Fifth Circuit.

WHEREFORE, Petitioners pray that the Court grant the Writ of Certiorari and reverse the judgment of the United States Court of Appeals for the Fifth Circuit.

HUDSON AND STULA

BY: Jim Hudson
Attorneys for Petitioners

Post Office Address:

313 Southern Mutual Building
Athens, Georgia 30601

CERTIFICATE OF SERVICE

This is to certify that I have this day served counsel for the opposite party in the foregoing matter with a copy of this pleading by depositing in the United States Mail a copy of same in a properly addressed envelope with adequate postage thereon.

This 21 day of Aug 1967

Jim Hudson
Attorney for Petitioners

G E O R G I A

CLARKE COUNTY

I, JIM HUDSON, an Attorney at Law, practicing in the United States District Court for the Middle District of Georgia, and a member of the bar of the United States Supreme Court, do hereby certify that:

1.

The Petitioners in this case retained me to represent them in the trial of the case before the United States District Court for the Middle District of Georgia.

2.

Upon the trial of the case, these two Petitioners were convicted and gave affidavits to the effect that they were paupers. Subsequently thereto, I was appointed to represent them by the United States Court of Appeals for the Fifth Circuit. An appeal was filed, briefs were filed, and I argued the case before the United States Court of Appeals for the Fifth Circuit.

3.

After said Court ruled against these Petitioners, I informed them that the said Court

had ruled against them and that they had the right to file for a Writ of Certiorari in the United States Supreme Court. Recently, these Petitioners informed me that they desired to file a Writ of Certiorari in the United States Supreme Court. I have not been employed by these Petitioners but am filing this petition for a Writ of Certiorari in accordance with what I consider to be my duty as a practicing member of this Court.

4.

I further solemnly swear that I am familiar with these Petitioners' ways and means and that they are paupers within the strict meaning of the word and should be allowed to proceed in form pauperis.

5.

I sincerely urge that the rulings of this case are of imperative importance so as to justify the deviation of normal Appellant processes due to their far-reaching effects; that the rules of Court which can be waived by the Court in its discretion should be waived; and that said case should be decided upon its merits by this Court. Further, it

411 SCT 72-518

will do no injury to any party as these Petitioners have been in jail since they were sentenced by the Court in 1966, and are presently in jail, Cecil William Myers being at the Federal Penitentiary in Terre Haute, Indiana, and Joseph Howard Sims being at the Georgia State Penitentiary in Reidsville, Georgia.

RESPECTFULLY SUBMITTED, this 21st day of August, 1967.

Jim Hudson (SEAL)

Sworn to and subscribed before me, this 21st day of August, 1967.

Notary Public, Franklin County, Ga.

My Commission Expires Feb. 4, 1970

CERTIFICATE OF SERVICE

This is to certify that I have this day served counsel for the opposing party in the foregoing matter with a copy of this pleading by depositing in the United States Mail a copy of same in a properly addressed envelope with adequate postage thereon.

This 21 day of Aug 1967

Jim Hudson

Attorney for Petitioners

UNITED STATES GOVERNMENT

Memorandum

TO : DIRECTOR, FBI (44-25873)

DATE: 11/14/67

FROM : SAC, WFO (44-558) (P)

SUBJECT: PENVIC
(OO:AT)

ReWFOlet to Bu dated 10/4/67.

A further examination of the docket in the U. S. Supreme Court regarding the case of CECIL WILLIAM MYERS and JOSEPH HOWARD SIMS vs the US, Case #554 Miscellaneous disclosed that on 10/12/67, a brief for the US in opposition to the petition for writ of certiorari was filed by the Office of the Solicitor General. On 10/19/67, this case was distributed to the Court Justices for consideration.

WFO will advise at such time as the USSC renders its decision either granting or denying certiorari in this case.

REC- 77 44-25873-11

EX 101

12 NOV 16 1967

(2) - Bureau
1 - Atlanta (157-788)
1 - WFO

RCV:jlw
(4)

54 NOV21 1967

Buy U.S. Savings Bonds Regularly on the Payroll Savings Plan

OPTIONAL FORM NO. 10
MAY 1962 EDITION
GSA FPMR (41 CFR) 101-11.6

UNITED STATES GOVERNMENT

Memorandum

TO : DIRECTOR, FBI (44-25873)

DATE: 12/28/67

FROM : SAC, WFO (44-558) (P)

SUBJECT: PENVIC
(OO:AT)

ReWFOletter to Bureau dated 11/14/67.

On 12/18/67, [redacted] Assistant Clerk, U.S. Supreme Court, advised the case of CECIL WILLIAM MYERS, and JOSEPH HOWARD SIMS vs. the U.S., case number 554 Miscellaneous, continues under consideration by the Court.

WFO will continue to follow this case in the Supreme Court.

REC 16 44-25873-50

12 DEC 29 1967

(3) - Bureau
1 - Atlanta (157-788)
1 - WFO

RCV:mav
(5)

SIX

JAN 10 1968

Buy U.S. Savings Bonds Regularly on the Payroll Savings Plan

FD-36 (Rev. 5-22-64)

FBI

Date: 1/29/68

Transmit the following in _____ (Type in plaintext or code)

Via AIRTEL _____ (Priority)

Mr. Tolson
Mr. DeLoach
Mr. Mohr
Mr. Bishop
Mr. Casper
Mr. Callahan
Mr. Conrad
Mr. Felt
Mr. Gale
Mr. Rosen
Mr. Sullivan
Mr. Tavel
Mr. Trotter
Tele. Room
Miss Holmes
Miss Gandy

TO: DIRECTOR, FBI (44-25873)

FROM: SAC, WFO (44-558) (RUC)

PENVIC
(OO:AT)

ReWFOletter to Bureau dated 12/28/67.

The U. S. Supreme Court issued an order today (1/29/68) in which it denied the petition for writ of certiorari in the case of CECIL WILLIAM MYERS and JOSEPH HOWARD SIMS vs. the United States, Case Number 554 Miscellaneous. It was stated in the order Mr. Justice Marshall took no part in the consideration or decision of this petition.

As this case has now been concluded in the Supreme Court, no further inquiry remains for WFO.

(3) - Bureau
1 - Atlanta (157-788)
1 - WFO

REC-35 521

RCV:jlw
(5)

EX-105

6 FEB 7 1968

AIRTEL

C. C. - Bishop

772

Approved: _____ Sent _____ M Per _____
Special Agent in Charge

70 FEB 15 1968

R-13 (Rev. 8-30-67)

UNITED STATES GOVERNMENT

Memorandum

TO : Assistant Director

- [XX] General Investigative Division
- [ ] Identification Division
- [ ] Laboratory Division
- [ ] Special Investigative Division
- [ ] Training Division
- [ ]

DATE: 11-1-68

FROM : T. E. Bishop

SUBJECT: Herbert Guest;
Et Al
Civil Rights; NFA
44-25873

Following check-marked item was processed in Crime Records Division and is enclosed for your approval:

- [XX] Interesting Case Memorandum
- [ ] Interesting Identification
- [ ] Interesting Identification - Laboratory
- [ ] National Academy Item
- [ ] Police Training Item

Upon approval, it is suggested that this memorandum be returned to the Crime Records Division for further handling. 5630

CRIME RESEARCH

Enc.

Printed & Distributed
12-16-68 JRP/aw

THREE

[redacted]

HERBERT GUEST;
JAMES SPERGON LACKEY;
CECIL WILLIAM MYERS;
JOSEPH HOWARD SIMS

LEMUEL A. PENN, DECEASED,
ET AL - VICTIMS

CIVIL RIGHTS; NATIONAL
FIREARMS ACT

SYNOPSIS: About 4:50 a.m. on July 11, 1964, Lt. Col. Lemuel A. Penn, a Negro member of the U. S. Army Reserve, was shot and killed by passing motorists while driving near Colbert, Georgia. FBI Agents conducted an intensive investigation which revealed that James Spergon Lackey drove the car while Cecil William Myers and Joseph Howard Sims fired shotguns into Penn's automobile. These three men were members of the Ku Klux Klan. In a signed statement, another Klansman, Herbert Guest, told FBI Agents that he had overheard Sims and Myers talking about murdering Penn. He also stated that his shotgun was used without his knowledge. On August 6, 1964, a complaint was filed before the U. S. Commissioner at Athens, Georgia, charging Guest, Lackey, Myers and Sims with violation of Title 18, Section 241, U. S. Code. The four Klansmen were arrested early on the evening of August 6. On the same date, state murder warrants were filed against Guest, Lackey, Myers and Sims. A Madison County Grand Jury returned an indictment charging Lackey, Myers, and Sims with the murder of Penn. On August 31, 1964, the state murder trial began in Danielsville, Georgia. Lackey was to be tried separately from Myers and Sims. The state murder charge against Guest was dismissed. Guest had been charged with murder but was not indicted. On September 4, 1964, a jury returned a verdict of not guilty with respect to Myers and Sims. The facts which had been gathered in the FBI's investigation of the murder of Lemuel Penn and

I.C. #44-25873

GCW

51 JAN 9 - 1969

44-25873

MAIL ROOM ☐ TELETYPE UNIT ☐

ENCLOSURE

other acts of terrorism and intimidation against Negroes in this area of Georgia were presented to the Federal Grand Jury at Athens in mid-October, 1964. On October 16th, the grand jury returned an indictment charging Guest, Lackey, Myers and Sims, as well as Denver Phillips and George Hampton Turner, with violating Title 18, Section 241, U. S. Code. The grand jury also returned an indictment charging Guest with violation of the National Firearms Act. On November 18, 1964, motions were filed by the defense to dismiss the indictment against the six men. On December 29th a written order was issued dismissing the indictment. The dismissal of the indictment was appealed to the Supreme Court by the Department of Justice in 1965. On March 28, 1966, the Supreme Court reversed the dismissal. On June 9, 1966, the indictment of Herbert Guest under the National Firearms Act was dismissed. On June 10, 1966, the judge ordered a severance in the civil rights case against the six men. Sims, Myers and Turner would be tried first--then, Lackey, Guest and Phillips. On July 1, 1966, the jury returned a sealed verdict regarding Sims, Myers and Turner. On July 8, 1966, a jury returned its verdict as to Guest, Lackey and Phillips, all of whom were found not guilty. The verdict in the trial of the other three subjects was then announced. Turner was acquitted while Sims and Myers were found guilty. On July 9, 1966, Sims and Myers were sentenced to serve 10 years each. Both men appealed. In May, 1967, their convictions were affirmed by the 5th Circuit Court of Appeals; and in January, 1968, the U. S. Supreme Court denied the two convicted men's petition for writ of certiorari.

SYNOPSIS SHOULD BE REMOVED PRIOR
TO RELEASE OUTSIDE THE BUREAU

HERBERT GUEST;
JAMES SPERGON LACKEY;
CECIL WILLIAM MYERS;
JOSEPH HOWARD SIMS

LEMUEL A. PENN, DECEASED,
ET AL - VICTIMS

CIVIL RIGHTS; NATIONAL
FIREARMS ACT

At 12:15 a.m., July 11, 1964, three Negro members of the United States Army Reserve--Major George Carl Richmand*, Lt. Colonel Charles Ray Ponder*, and Lt. Colonel Lemuel A. Penn--left Fort Benning, Georgia, after completing a two-week tour of active duty. The three officers were returning to their homes in Washington, D.C. They were traveling in Major Richmand's car, a white 1959 Chevrolet sedan.

Major Richmand drove the car from Fort Benning to Athens, Georgia, where Colonel Penn moved into the driver's seat sometime after 4 a.m. Lemuel Penn, Director of Vocational and Adult Education for the District of Columbia schools, headed the car northeast on Highway 72 to Colbert, Georgia, where he turned north on Highway 172. At a point nearly 12 miles outside of Colbert where Highway 172 crosses Broad River, another vehicle pulled alongside the 1959 Chevrolet. The time was approximately 4:50 a.m. Two shotgun blasts were fired from this passing vehicle. One tore into Colonel Penn's left jaw and neck, killing him instantly. The second ripped through the left rear window.

Major Richmand, who was asleep in the front seat, and Colonel Ponder, who was reclining on the back seat, escaped injury. Both

Tolson
DeLoach
Mohr
Bishop
Casper
Callahan
Conrad
Felt
Gale
Rosen
Sullivan
Tavel
Trotter
Tele. Room
Holmes
Gandy

I.C. #44-25873
*Fictitious
GWW

44-25873-

MAIL ROOM ☐ TELETYPE UNIT ☐

men reacted quickly--Ponder leaning over the seat and grabbing for the steering wheel, and Richmand struggling to reach around Colonel Penn's body and gain control of the car.

The two men succeeded in stopping the car a short distance beyond the bridge across Broad River. They moved their dead companion into the passenger's seat, turned the car around, and headed back in the direction of Athens--about 23 miles away--with Major Richmand at the steering wheel.

As he drove southwest on Highway 172, Richmand noticed the headlights of another car on the road behind him. Fearing that it might be the killers' car bearing down, he speeded up. When he reached the intersection of Highways 172 and 72 just east of Colbert, he overshot the turn. His Chevrolet continued across the road, down an embankment, and came to a stop near some railroad tracks.

The two men climbed from the car and walked back to the highway. A passing motorist saw them and summoned Colbert's night policeman to the scene.

Leaving Ponder to watch over the disabled car, the police officer and Richmand drove to the City Hall in Colbert where, at 5:25 a.m. on July 11, 1964, the policeman telephoned the Madison County Sheriff. At the sheriff's instruction, he also telephoned a wrecking service and a mortician.

At approximately 9 a.m. on Saturday, July 11th, an FBI Agent assigned to the Augusta, Georgia, Resident Agency received a telephone call from a Fort Gordon, Georgia, Military Police Investigator relating the bare facts of what had occurred on Highway 172. This Agent immediately telephoned the Savannah and Atlanta FBI Offices. At 9:22 a.m. the FBI's Special Agent in Charge at Atlanta placed a call to the Colbert Police Department. There, he was briefed on the full circumstances of the senseless act of terror which had claimed Lemuel Penn's life. The Special Agent in Charge called FBI Headquarters and was instructed to institute investigation immediately.

Since this crime was also within the jurisdiction of the Georgia Bureau of Investigation, that agency was given a complete fill-in, and a squad of state investigators was assigned to work with FBI Agents at the murder scene.

Interviewed in detail by FBI Agents, George Richmand could furnish no description of the murder vehicle. All he saw when jolted from his sleep on the front seat were the tail lights of the killers' car as it sped away. However, Charles Ponder had gotten a brief look at the automobile and felt it was a General Motors product--"a cream- or light-colored General Motors car, possibly a Chevrolet." He also told the Agents that the silhouettes of three persons were visible in the car.

By the afternoon of July 11th, FBI Agents and members of the Georgia Bureau of Investigation were carefully searching along Highway 172 for hundreds of feet on both sides of the bridge. Photographs were taken of the murder scene and surrounding terrain, and plaster casts were made of three tire tracks found alongside Highway 172 almost one-half mile northeast of the bridge--tire tracks which might have been made by the murder vehicle when it turned around. (Upon examination by the FBI Laboratory, two of these plaster casts were found to bear the impressions of a well-known tire company. The tire impression in the third plaster cast was not identifiable.)

. At 10:18 p.m., July 11th--approximately 17 1/2 hours after the shotgun slaying of Lemuel Penn--Agents investigating this case in northeastern Georgia sent a teletype to FBI Headquarters which stated: "...List of suspects drawn up based on Klan activities of individuals in area and particularly their involvement in previous violence and shooting incidents. Investigation continuing to determine which suspects can be placed on the street in the early morning hours of July 11th."

From the afternoon of July 11th through nightfall on July 15th, teams of FBI Agents and officers of the Georgia Bureau of Investigation fanned out along highways and dirt roads of predominantly rural Madison County interviewing more than 200 local residents. In addition, owners and employees of service stations, restaurants, and other business places were contacted to determine if they had any information which would help to identify the highway killers.

The sheriff furnished the names of communities in Madison County where police officers might have been on duty during the early morning hours of July 11th. Law enforcement officials in these areas were contacted. None of them could furnish information of assistance in the case.

A second focal point of investigation was Athens, Georgia, where the three men had stopped sometime after 4 a.m. so Colonel Penn could relieve Richmand behind the steering wheel.

Investigation in Athens quickly focused upon a group of militant Klansmen--violence-prone individuals who gathered at the garage of Herbert Guest and also frequented an all-night restaurant on West Hancock Street. By nightfall on July 12th, the Agents in Athens had established that Guest, (Joseph) Howard Sims, and at least two other members of Clarke County Klavern #244 had been together on Hancock Street during the early morning hours of July 11th.

Guest, who was 5 feet 11 inches tall and weighed 250 pounds, became 37 years old in July, 1964. He had a first grade education.

The 41-year-old Sims was a skilled machinist who frequently skipped work. He had a 9th grade education and also claimed to have attended a trade school. Sims's most distinctive personal characteristic was an explosive temper. He had an avid interest in automobile racing and shared with Guest a fondness for firearms. The FBI learned that the 6-foot, 210-pound Sims was Kladd (conductor) of Clarke County Klavern #244--and that both he and Guest were active members of the Klavern's armed "Security Patrol."

On the night of March 12, 1964, Sims had been arrested by the Athens Police Department after he struck an elderly Negro man on the head with a pistol at a drive-in restaurant where a demonstration was in progress. Seven stitches were required to close the wound on the man's head. Following his arrest, Sims was placed on $200 bond and bound over to Superior Court on a charge of pointing a pistol at another.

The Chief of the Athens Police Department had been on the scene at the demonstration of March 12th and noted that 4 double-barreled 12-gauge shotguns were "on display" in a 1963 Chevrolet at the scene. He seized these weapons but, after determining that no Federal, state or local firearms laws had been violated, he returned them the following day to their owners--Herbert Guest and Hampton Turner.

(George) Hampton Turner, the Kligrapp (secretary) of Clarke County Klavern 244, had also been identified as a member of the armed "Security Patrol." A 31-year-old loom fixer for a company in Athens, he was an outspoken segregationist and--like Sims, Guest, and other militant Klansmen--held a Clarke County "Pistol Toter's" permit.

Checking other incidents of violence in which Athens Klansmen had been involved, the FBI determined that a white Chevy II station wagon with the Letters "KKK" on its side and tailgate had been in the vicinity of West Broad and Rock Spring Streets in Athens late on the night of June 20, 1964. The occupants of this station wagon engaged in a shouting and cursing "contest" with a group of Negroes at the corner of these streets. The "contest" ended when the driver of the station wagon fired a pistol into the air with his left hand and sped from the scene.

At about 12:20 a.m., June 21 (possibly an hour after the first incident) a Chevy II station wagon again appeared at the corner of West Broad and Rock Spring Streets. Behind it was a two-tone 1961 Cadillac sedan with Herbert Guest behind the steering wheel and another Athens Klansman, Paul T. Strickland, Jr., also in the car. The Cadillac stopped long enough for a shotgun to be shoved out one of its windows and a blast fired into the air.

Approximately one half hour later, a 1958 Cadillac sedan--this one all white with a damaged right front fender--arrived at this same intersection and proceeded a few yards west on West Broad Street. Then the Cadillac stopped; a shotgun was thrust out its right rear window; and two shots were fired toward a nearby apartment building. A pellet from one of the shells struck a 13-year-old girl in the face. Another pellet hit a man, severely damaging his right eye.

Two witnesses to these shootings accompanied Athens police officers to Guest's garage where they found Herbert Guest, (Joseph) Howard Sims, Paul Strickland and a fourth local Klan associate, Denver Willis Phillips. In addition, they located: a two-tone 1961 Cadillac sedan, the property of Herbert Guest; a white 1958 Cadillac sedan, the property of Denver Phillips; and a white Chevy II station wagon, which belonged to yet another member of Clarke County Klavern 244, Cecil William Myers.

Phillips, whose Cadillac was determined to have improper license plates, was arrested by the police for possession of an illegally registered vehicle and assault with intent to kill. He subsequently was released on $2,600 bond.

Strickland was arrested for discharging firearms in the city and assault with intent to kill. He was found guilty of the first charge and paid a $105 fine in lieu of spending 100 days in jail. He was released on $2,500 bond pending presentation of the second charge to the grand jury.

Guest was arrested on a charge of disorderly conduct and, like Strickland, was sentenced to pay a fine of $105 or spend 100 days in jail. He chose to pay the fine.

These five persons--Guest, Sims, Strickland, Myers, and Phillips, together with others who frequented Guest's garage--became the focal point of intensive investigation by the FBI. The investigation disclosed a pattern of arrogance, hate, and intimidation toward Negroes by members of the Clarke County Klavern 244.

Several persons were located who recalled seeing Guest, Sims and two or three other Athens Klansmen at a restaurant on West Hancock Street during the early morning hours of July 11th. At least some of the Klan members were wearing pistols, and an Athens police officer who saw them that night commented, "It's not unusual for those characters to stop by the all-night restaurant at a late hour--particularly on nights when they're 'patroling' the streets checking Negroes' cars."

On July 22, 1964, (George) Hampton Turner was interviewed by two Agents at the FBI Resident Agency in Athens. Turner admitted he had been a member of the Klan "for a couple of years" and held the post of Kligrapp (secretary) in the local Klavern. He declined to furnish the names of other Klansmen or to discuss the Klavern's activities.

Turner had an unshakeable alibi for the night of July 10th and 11th. He and his wife were at work. They were employed on the midnight to 8:00 a.m. shift at an Athens manufacturing concern. Turner insisted he knew nothing about the murder of Lemuel Penn aside from what had appeared on television and in the newspapers. Nor did he know anyone who might be capable of such a crime. He suggested, "You might consider the possibility that he was killed by the two Negroes who were traveling with him."

On July 29th, Herbert Guest agreed to be interviewed by two FBI Agents at the Resident Agency in Athens. He claimed to know nothing about the murder of Lemuel Penn and insisted he was working at his garage

on East Hancock Street during the night and early morning hours of July 10th and 11th. "I was in and out of the garage a few times with the service truck," Guest stated, "and I recall that shortly after 4 a.m. a man from Lawrenceville, Georgia, came in with an Oldsmobile to have some work done on the trailer hitch and trailer lights. I worked on his car for about 30 minutes--then had a cup of coffee with him at the gas station across the street."

Guest told the Agents that Howard Sims, James Lackey and Cecil Myers had been hanging around his garage, and about 5 a.m. the four of them decided to go to the restaurant on West Hancock Street for breakfast. "We had also been at the restaurant earlier--probably around midnight," he said. After breakfast, the four Klansmen returned to Guest's garage. It was then about 5:30 a.m., and Sims, Lackey and Myers left to go home.

Twenty-four-year-old Denver Phillips was also interviewed on July 29th. A former auto racing driver with a 5th grade education, Phillips was employed as a mechanic at Guest's garage. Like Guest, he was illiterate.

Phillips also claimed to have no information regarding the murder of Lemuel Penn. He said he reported to work at Guest's garage shortly after 5 p.m. on July 10th. It was a "slow" night at the garage, and about 11 p.m. he went to sleep in a 1957 Buick which had been left for repairs. "I slept until about 5:30 Saturday morning, July 11th, when one of the 'day men' reported for work and woke me up."

Phillips recalled that Howard Sims and Cecil Myers came to the garage at about 9 p.m. on July 10th. Myers was driving his white Chevy II station wagon, and Sims arrived in a blue Chevrolet sedan. "Sims left about 11 o'clock--just before I 'sacked out' for the night," Phillips continued. "He said he was going to pick up his wife. Both Myers and Guest were still in the garage."

Sims refused to be interviewed when approached by the FBI on July 29th. "I have a bad migraine headache," he told the Agent who approached him at a street corner in Athens, "and I can't think straight. How would it be if I came to your office about 5:30 tomorrow afternoon--after I get out of work?"

The following day, Sims telephoned the FBI Resident Agency in Athens and stated that he still had a migraine headache. "I'm anxious to cooperate with you," he told the Agent who answered the phone, "but I want to talk to my attorney first--and he's out of town right now."

Contacted at his home in Athens by two Agents on July 29th, Cecil W. Myers stated he had no information regarding the murder of Lemuel Penn. He claimed that sometime after 9 p.m. on July 10th he drove to the home of James Lackey in Athens, where he, Lackey and Sims set up a watch for a prowler who had been worrying the neighborhood. "We stayed at Lackey's house until about 5 a.m., July 11th, when the three of us went to the all-night restaurant," Myers told the Agents. "On two or three other occasions earlier in the night, we also made brief trips to the restaurant." Myers readily admitted that he was a member of the United Klans of America. He also admitted that within the past week he had replaced the the tires on his white 1964 Chevy II station wagon with an entirely new set.

Also interviewed on July 29th was 28-year-old James S. Lackey, manager of a service station on Oconee Street in Athens. At the outset, Lackey denied having any information regarding the highway slaying of Lemuel Penn. He claimed that on the evening of July 10th he met Sims and Myers at the garage operated by Herbert Guest. According to Lackey, the four of them drove to Lawrenceville, Georgia, that evening and returned about midnight. He stated that his wife had called Guest's garage while they were in Lawrenceville, leaving a message there was a prowler in the neighborhood.

Lackey continued that he, Sims and Myers immediately drove, in Myers' station wagon, to Lackey's residence, where they began looking for the prowler. "All of us were wearing revolvers," he said. "And Sims also had a sawed-off double-barreled shotgun in the car."

According to Lackey, he and his two fellow Klansmen waited and watched for the prowler until about 1 or 1:30 a.m.--at which time they drove to the restaurant for coffee. Then they returned to Lackey's neighborhood and resumed their vigil. "We finally called it off and drove back to the garage on Hancock Street. Herbert Guest was fixing a car. We waited there from about 4:30 until 5 or 5:15 a.m. and then left Guest's place and went to the restaurant."

As the Agents continued questioning him, Lackey admitted that some of his story had been fabrication. He gave a second account of his activities on the night of July 10th to 11th which revealed that about 7 p.m. Cecil Myers had brought his family to Lackey's house. Lackey and Myers

left in Myers' Chevy II station wagon for Guest's garage--and then drove to the headquarters of the Clarke County Klavern of the United Klans on Prince Avenue in Athens. Here they met Howard Sims. A few minutes later, Herbert Guest arrived and asked them to accompany him to Lawrenceville. The four men drove to Lawrenceville in Myers' station wagon, returning about 11 p.m.

Lackey stated that from 11 p.m. until 3 a.m. the four men spent their time--in various combinations--at Guest's garage, at the restaurant, in the vicinity of Lackey's home, and on the streets of Athens. Lackey claimed he went home about 3 a.m., leaving Myers and Sims in the Chevy II wagon. He sat up and chatted with his wife and Mrs. Myers until about 5:30 or 6 a.m.--when Cecil Myers arrived to pick up his wife and children. Lackey asked Myers what had taken him so long, and Myers replied, "We (Sims and Myers) had a little matter in the Negro section to take care of."

By August 3rd, the elusive, tight-lipped Sims agreed to be interviewed by the FBI. He maintained that he had no information concerning the murder of Lemuel Penn. Sims told the Agents he had heard that four or five illegal whiskey stills were put out of business in the Colbert area by Internal Revenue agents--and that an informant had furnished the location of these stills, one who had a Chevrolet of the same color and model as the car which Lemuel Penn was driving. Possibly Colonel Penn had been mistaken for the informant and killed by the "moonshiners."

Next, Sims tried to point the finger of suspicion at an 18-year-old who had recently joined the Klan. Sims told the Agents that this youth remarked to him and to a group of other men at Guest's garage on July 11th, "I don't know what you all did last night, but I got myself one."

With regard to his own activities on the morning of July 11th, Sims said that he was doing "some police work" in the vicinity of Lackey's house. "Lackey, Cecil Myers and I spent most of the night on a 'stakeout,'" he said. "We were looking for a prowler."

Sims also recalled that he had stopped by Herbert Guest's garage, as well as the restaurant, at various times that night. Cecil Myers and Herbert Guest were also interviewed on August 3rd. Both stuck closely to the story they had given when contacted five days previously. Myers was wearing a revolver and holster at the time of the interview.

Guest was interviewed on both August 3rd and 4th. The FBI had located persons who verified his story (given to the Agents on July 29th) that during the early morning of July 11th, he worked on a hitch and lights for a trailer at his Athens garage. During the August 4th interview, Guest (as Sims had done the previous day) told the Agents that a young Klansman had come to his garage on the morning of July 11th and boasted, "I got me one." Guest said he interpreted this remark to mean that the teen-ager had shot a Negro. The garage owner continued that it was not uncommon for the persons who hung out at his place of business to boast about having shot Negroes. "But I don't believe them," he said, " and I don't think anyone else does either."

Guest also told the Agents on August 4th that he had sold Cecil Myers the four tires which only recently were placed on Myers' station wagon.

As the interview continued, Guest confided, "If I knew 'they' killed Penn, which I don't, it would be dangerous to tell you because I am a family man and 'they' might get me....I might have my own feelings regarding 'them,' but I don't know that 'they' did it."

Asked to elaborate concerning his "feelings," Guest said he felt that Lackey, Sims and Myers "could have done it" because they were gone for a long time on the morning of July 11th. The rotund Klansman denied that any of the three had admitted to him being involved in the shotgun slaying. Then he reiterated that he was afraid for his own safety and the safety of his family.

The FBI also attempted to reinterview James Lackey on August 3, 1964; however, he claimed that he was ill, possibly suffering from ulcers, and that he had an appointment to see a doctor that day. The Agents left. When they recontacted him, arrangements were made for him to be interviewed on the morning of August 6th.

At the outset of this interview, Lackey told the Agents he wanted "to set the record straight." He furnished a signed statement (which was introduced in evidence at the murder trial of Sims and Myers at Danielsville, Georgia, in September, 1964,) implicating Cecil Myers and Howard Sims in the murder of Lemuel Penn. Lackey stated he drove the car with Myers in front with him while Sims sat in the back seat. When Lackey pulled alongside Penn's automobile, Myers and Sims fired shotguns into it. Then they returned to Guest's garage in Athens. He elaborated fully as to the precise details of the shooting incident.

Interviewed again on the afternoon of August 6th, Herbert Guest furnished a signed statement which corroborated in many details the statement furnished by James Lackey.

On August 6th, the FBI filed a complaint before the United States Commissioner at Athens charging Guest, Lackey, Myers and Sims with conspiring--in violation of Title 18, Section 241, U. S. Code--to injure, oppress, threaten and intimidate members of the Negro race in the free exercise and enjoyment of rights and privileges secured to them by the Constitution and laws of the United States, "namely, rights secured to them by Title II and Title III of the Civil Rights Act of 1964."

The four Klansmen were arrested early on the evening of August 6th. Two of them--Guest and Lackey--were arrested at the FBI Resident Agency in Athens. Myers was arrested at his home, and Sims, at the Clarke County Klavern.

On the night of August 6th, the United States Commissioner set bond for each of the defendants at $25,000. In lieu of bond, the four men were confined in the Clarke County Jail.

On the evening of August 6th state murder warrants were also filed against Guest, Lackey, Myers and Sims by Madison County authorities. Madison was the county in which the murder of Lemuel Penn had occurred.

On August 17th the Atlanta FBI Office delivered to the Solicitor General of the Northern Judicial Circuit of Georgia a comprehensive report of the FBI's investigation. Eight days later, a Madison County Grand Jury returned an indictment charging Lackey, Myers and Sims with the murder of Lemuel Penn.

The state murder trial began in Danielsville on August 31, 1964. Initially, a motion was made and granted that Lackey be tried separately from Myers and Sims. (In addition, on September 2nd, the state murder charge against Guest was dismissed. Guest had been charged with murder in a warrant filed on August 6th but was not indicted by the Madison County Grand Jury.)

On the afternoon of August 31st a motion to suppress alleged confessions and testimony of Lackey was served on the United States Attorney at Macon, Georgia. The motion requested that Lackey's confessions and incriminating admissions be suppressed--and that officers and agents of the

United States and the State of Georgia be restrained from testifying thereto in any court of the State of Georgia or of the United States. (Despite the action taken to suppress Lackey's confession, it was admitted into evidence in the trial of Myers and Sims on September 2, 1964. The following day, the signed statement which Guest had given the FBI on August 6th was also read into the record.)

On September 3rd, defendants Myers and Sims took the witness stand. They were not sworn (a procedure acceptable in Georgia) and denied being involved in Lemuel Penn's murder.

At 4:40 p.m. on September 4, 1964, the case went to the jury. The jury recessed for dinner at 6:45 p.m. and resumed its deliberations at 8:45 p.m. Less than 1 1/2 hours later, it returned a verdict of not guilty with respect to both Myers and Sims.

At this point in the case, a state murder indictment still remained outstanding against Lackey, and he was confined at the Bibb County Jail in Macon, Georgia. In addition, he, Guest, Myers and Sims still faced the Federal charge of violation of Title 18, Section 241, U. S. Code which resulted in their arrest by FBI Agents.

The facts which had been gathered in the FBI's intensive investigation of the murder of Lemuel Penn and other acts of terrorism and intimidation against Negroes in this area of Georgia were presented to the Federal Grand Jury at Athens in mid-October, 1964. On October 16th, the Grand Jury returned an indictment charging Guest, Lackey, Myers and Sims, as well as Denver Phillips and (George) Hampton Turner, with violating Title 18, Section 241, U. S. Code. The indictment charged these six men with conspiring "to injure, oppress, threaten and intimidate Negro citizens" in the free exercise and enjoyment of "rights and privileges secured to them by the Constitution and laws of the United States." The indictment read: "It was a part of the plan and purpose of the conspiracy that its objects be achieved by various means" which included, among others, "shooting Negroes," "beating Negroes," "killing Negroes," "damaging and destroying property of Negroes," and "pursuing Negroes in automobiles and threatening them with guns."

Conviction for this offense would carry a maximum penalty of 10 years' imprisonment and/or $5,000 fine.

The Grand Jury also returned a second indictment charging Guest with possession of a shotgun having an over-all length of less than 26 inches which had not been registered by Guest with the Secretary of the Treasury or his delegate. Under Title 26, Section 5851, U. S. Code, conviction for this offense could result in a maximum sentence of five years' imprisonment and/or a $2,000 fine.

The trial of this Federal case was scheduled to begin on January 11, 1965. However, on November 18, 1964, motions were filed by the defense to dismiss the indictment against the six men, alleging that the language was vague, indefinite and prejudicial. Arguments were heard by a judge of the U. S. District Court at Macon on December 28th, and the following day he issued a written order dismissing the indictment. In his December 29th order, the judge noted that "under the Criminal Appeals Act...the Government has a speedy remedy for a review of this ruling by the Supreme Court, and if it be there adjudicated that this indictment is valid a trial can yet be had."

The dismissal of the indictment in this case was appealed to the Supreme Court by the Department of Justice in 1965. On March 28, 1966, the Supreme Court reversed the dismissal and remanded the case to District Court for trial.

Three months elapsed between the date of this Supreme Court ruling and the start of the trials of the six defendants in Federal Court in Athens. During this period, the self-created problems of various defendants steadily mounted.

For example, Herbert Guest was arrested on April 12, 1966, and charged with dispensing drugs (amphetamine sulphate tablets, or "pep pills") without a prescription. He subsequently pleaded guilty and, on July 9, 1966, was sentenced to the custody of the Attorney General for six months on each of four counts, sentences to run consecutively.

On May 5, 1966, (Joseph) Howard Sims shot his wife in the face at an Athens hospital where she was employed. He surrendered the following day and was charge with assault with intent to murder. He pleaded guilty on July 18th and received a 10-year sentence.

Late in May, 1966, the FBI learned that the man whose trailer hitch and lights Herbert Guest had fixed during the early morning of July 11, 1964, had indicated to a member of the Georgia Bureau of Investigation that he had not told the FBI all he knew when two Agents had interviewed him on July 29, 1964. Located in Atlanta on June 1, 1966, he gave the FBI a signed statement revealing what he knew about the murder. He said he had heard Myers and Sims admit their part in the killing of Penn; however, he had not heard Lackey discuss the incident.

On June 9th, a Federal judge dismissed the indictment of Herbert Guest under the National Firearms Act on the grounds that the indictment specified the shotgun in question was "not registered by the defendant with the Secretary of the Treasury." The judge cited a case which had just been reversed by the 5th Circuit Court of Appeals in March, 1966, involving a similarly worded indictment. He stated that the March, 1966, ruling of the 5th Circuit Court of Appeals would apply also to Guest's case, even though Guest had been indicted many months earlier.

On June 10th, the judge also ordered a severance in the civil rights case against the six men. Sims, Myers and Turner would be tried first--then, Lackey, Guest and Phillips.

The first trial began in Federal Court in Athens on June 27, 1966, and ended July 1st. The jury returned a sealed verdict that date. The trial of Guest, Lackey and Phillips began on July 2nd and ended July 8th. Among the many witnesses to testify was the man on whose trailer lights and hitch Guest had worked on July 11, 1964. He produced a Klan membership card and testified to what he had been told by various defendants. The August 6, 1964, statements of Lackey and Guest were read into the record at their trial.

Late in the evening of July 8, 1966, the jury returned its verdict as to Guest, Lackey and Phillips. The three men were found not guilty. The judge then announced the verdict in the June 27th to July 1st trial. Turner was acquitted. Sims and Myers were found guilty.

On July 9th, Sims and Myers were sentenced to serve 10 years each. Both men appealed. In May, 1967, their convictions were affirmed by the 5th Circuit Court of Appeals, and in January, 1968, the United States Supreme Court denied the two convicted men's petition for writ of certiorari.

4-341 (Rev. 5-23-73)

UNITED STATES GOVERNMENT

Memorandum

Mr. Felt
Mr. Baker
Mr. Callahan
Mr. Cleveland
Mr. Conrad
Mr. Gebhardt
Mr. Jenkins
Mr. Marshall
Mr. Miller, T.S.
Mr. Sayers
Mr. Thompson
Mr. Walters
Tele. Room
Mr. Baise
Mr. Barnes
Mr. Bowers
Mr. Herington
Mr. Conmy
Mr. Mintz
Mr. Eardley
Mrs. Hogan

TO : Mr. Marshall

DATE: SEP 14 1973

FROM : P. F. O'Connell

SUBJECT: PENVIC
CR

Bulky Exhibit File Number: 44-25873-315

We are in the process of reviewing all bulky exhibits in order that we may dispose of those which serve no further purpose. Inasmuch as many of the bulky exhibits pertain to inactive cases and are occupying badly needed space, it is requested that the appropriate substantive supervisor review the above-listed bulky exhibit and render a decision as to its retention or disposition. A notation as to the decision reached may be placed on this memorandum. The memorandum should be returned to the Filing Unit of the Records Section, Room 1116, Identification Building, for filing in the case file.

RECOMMENDATION:

That captioned bulky exhibit be reviewed and a decision rendered as to the retention or disposition of the material.

JEB:ncf

☐ Retain ☑ Destroy ☐ Other Disposition _____

Reason for Decision _____

Signature of Reviewing Supervisor _____

NOT RECORDED
SEP 18 1973

84 SEP 21 1973